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REPORTS OF THE COMMITTEES

OF THE

SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE FORTY-THIRD CONGRESS.

1873-'74.

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TO

THE REPORTS OF THE COMMITTEES

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FOR THE

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T A B L E

OF

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FOR THE

FIRST SESSION OF THE FORTY-THIRD CONGRESS.

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 10, 1873.—Ordered to be printed.

Mr. SHERMAN, from the Committee on Finance, submitted the following

R E P O R T :

Resolved, That it is the duty of Congress during its present session to adopt definite measures to redeem the pledge made in the act approved March 18, 1869, entitled "An act to strengthen the public credit," as follows :

And the United States also solemnly pledges its faith to make provision at the earliest practicable period for the redemption of the United States notes in coin.

And the Committee on Finance is directed to report to the Senate at as early a day as practicable such measures as will not only redeem this pledge of the public faith, but will also furnish a currency of uniform value, always redeemable in gold or its equivalent, and so adjusted as to meet the changing wants of trade and commerce.

Mr. BAYARD submitted the following as the

VIEWS OF THE MINORITY :

Whereas a just regard for the interests of every class of the community demands that the national basis of finance shall consist of a currency of uniform standard and intrinsic value : Therefore,

Resolved, That the Committee on Finance be, and they are hereby, instructed to report to the Senate measures which will secure at the earliest practicable day a return to specie payments.

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 11, 1873.—Ordered to be printed.

Mr. BAYARD, from the Committee on Finance, submitted the following

REPORT:

The Committee on Finance, to whom were referred the petition and accompanying papers of William Thwing, of Boston, praying that the duties paid by him, August 26, 1862, upon an invoice of nitrate of soda, imported from South America, which was on shipboard on and after the 1st day of August, 1862, (the vessel not arriving in Boston until August 24, 1862,) be refunded, having considered the same, respectfully report:

That the act of July 14, 1862, entitled "An act increasing temporarily the duties on imports, and for other purposes," (Statutes at Large, vol. 12, p. 543,) imposed a duty of 1 cent per pound on nitrate of soda; and by section 21 it was provided "that all goods, wares, and merchandise which may be in the public stores or bonded warehouse on the first day of August, eighteen hundred and sixty-two, may be withdrawn for consumption upon payment of the duties now imposed thereon by law, *provided* the same shall be so withdrawn within three months from the date of original importation; but all goods, wares, and merchandise which shall remain in the public stores or bonded warehouse for more than three months from the date of original importation, if withdrawn for consumption, *and all goods on shipboard on the first day of August, eighteen hundred and sixty-two, shall be subject to the duties prescribed by this act.*"

To grant the relief now prayed for would expressly repeal by special law, and for individual benefit, a feature of general and public legislation, which they are unwilling to recommend, and therefore report adversely to the petition.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 15, 1873.—Ordered to be printed.

Mr. WRIGHT, from the Committee on Finance, submitted the following

REPORT:

The Committee on Finance, to whom was referred the petition of A. S. Rosenbaum & Co., that they be re-imbursed the cost of tax-stamps on certain tobacco, burned at sea, submit the following report:

Petitioners state that about the 1st of June, 1872, they bought of Pace & Stowell, of Danville, Va., 383 boxes of tobacco, net weight 18,929 pounds. This was shipped in bond to New York, consigned to the collector of the proper district.

While in transit, and on the 6th of June, 1872, the act decreasing the tax from 32 to 20 cents per pound was passed, to take effect 1st July ensuing. Upon the holding of the Commissioner of Internal Revenue, that this tobacco would in the bonded warehouse be taxable at the rate of 32 cents per pound, and by his permission, (as petitioners state,) it was returned to the place of manufacture and stamped with the new tax, or 20 cents per pound. It was again, thus stamped, re-shipped to New York, and afterwards 100 boxes sent by railroad to San Francisco, and the remaining 283 boxes, weighing 14,008 pounds, by steamer, to the same place, which steamer was destroyed by fire and the whole cargo lost. By the statement of Pace & Stowell it appears that the tobacco was sold to petitioners on the 29th of July, 1872. It also appears, by the certificate of the collector in Virginia, that Pace & Stowell purchased the stamps which were placed on the tobacco. Petitioners claim to be re-imbursed the amount paid for the stamps placed on the tobacco lost at sea, or 20 cents on the 14,008 pounds, or \$2,801.60.

On these facts your committee are of opinion that petitioners are not entitled to relief. They never purchased any stamps, as far as we know. The revenue was never increased a dollar by any contribution from them. We know of no principle upon which they can ask to be subrogated to any possible rights of Pace & Stowell. Because they purchased and lost tobacco, upon which others paid the tax, is no ground for re-imbursing *them* the tax thus paid.

Then, again, we cannot recognize a rule which would render the Government liable to thus re-imburse taxes where the property has passed beyond its control, in no manner subject to the care or protection of any of its officers, where the owner selects his own means of shipment, and may take those more or less hazardous, dependent upon the prospect for large or small profits.

Without more, we report that the claim ought not to be allowed, and we ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 17, 1873.—Ordered to be printed.

Mr. SCOTT, from the Committee on Claims, submitted the following

R E P O R T :

The Committee on Claims, to whom was referred the petition of Antoinette Darling, praying compensation for damages sustained in consequence of Indian depredations in Minnesota, have had the same under consideration, and submit the following report :

This petition was originally introduced in the Fortieth Congress on the 26th May, 1868, and referred to the Committee on Indian Affairs. It has been since introduced in the Forty-first and Forty-second Congresses, has been successively referred to the Committees on Indian Affairs, Appropriations, and Claims, and on the 15th February, 1873, the Committee on Claims was discharged from its further consideration.

Some remedy should be found to prevent the continued reference of claims which have been repeatedly examined and found to be such as ought not to be allowed, and the committee are of opinion that there should be a rigid enforcement of the spirit of the forty-ninth rule of the Senate, which provides that " whenever a claim is presented to the Senate and referred to a committee, and the committee report that the claim ought not to be allowed, and the report be adopted by the Senate, it shall not be in order to move to take the papers from the files for the purpose of referring them at a subsequent session, unless the claimant shall present a memorial for that purpose, stating in what respect the committee have erred in their report, or that new evidence has been discovered since the report, and setting forth the new evidence in the memorial."

To bring this case within the rule, a report is now made upon it, which the committee ask the Senate to adopt.

The petitioner resided in Douglas County, Minnesota, with her husband, Andreas Darling, in August, 1862, on a farm owned by the husband. She claims that, owing to the Sioux Indian massacre in that month, the crops of grain and vegetables growing on about forty acres of the farm, and worth \$1,974, were destroyed and lost, and claims compensation for them ; her husband having, in the fall of 1862, removed to Missouri, where he was killed by bushwhackers in 1864.

Under act of 16th of February, 1863, (12 Stat. at Large, 652,) commissioners were appointed to ascertain the amount of damages suffered by these depredations, and the persons who have suffered the same, two hundred thousand dollars being set apart from the annuities due the Indians named in the act to pay the sums awarded.

By act of 28th May, 1864, (13 Stat., pp. 92, 93,) an appropriation was made to pay the persons named in the report of the commissioners, and by letter of the Secretary of the Interior, dated 10th January, 1873, it

is stated that "the name of Antoinette Darling does not appear among those whose claims were examined and reported upon by the commissioners."

If the claim was a proper one it ought to have been presented to the commissioners thus specially provided to examine it; and, as it was not so presented, it ought not to be paid by a general appropriation out of the Treasury.

The committee therefore report that the claim ought not to be allowed.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 17, 1873.—Ordered to be printed.

Mr. SCOTT, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Frank C. Darling, praying compensation for property destroyed in Minnesota by Indians in 1862, have had the same under consideration, and report :

That for reasons stated in the accompanying letter of the Secretary of the Interior, dated 4th February, 1873, the claim ought not to be allowed.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., February 4, 1873.

SIR: I have the honor to acknowledge the receipt of your letter, dated the 1st instant, inclosing a claim of Frank C. Darling for compensation for property abandoned and lost by him on account of the outbreak in 1862 of the Sioux Indians in Minnesota. You ask, for the Senate Committee on Claims, for any information in the possession of this office respecting the case, and for its views as to whether or not the claim ought to be allowed.

In reply, I beg leave to say that it does not appear that the claim was ever before presented to this office for examination. It belongs to a class of claims for the adjustment of which Congress made provision by the act entitled "An act for the relief of persons for damages sustained by depredations and injuries by certain bands of Sioux Indians," approved February 16, 1863, (U. S. Stats. at Large, vol. 12, page 652.) The claimant alludes to the commission appointed under that act to examine and report the claims arising under it, and states, as a reason why his claim was not presented to the commission, that being in the military service, he had not an opportunity to present it, a statement unsupported by anything contained in the testimony adduced in his behalf. The commission was limited as to time in the reception of claims to the 1st of September, 1863. The claimant says he enlisted in October, 1862, and was discharged November 3, 1863, but it is suggested, admitting that he had no opportunity to lay his case before the commission within the prescribed time, that after his discharge he might have had it prepared and submitted to the Secretary of the Interior before that officer reported the result of the investigation of the commission to Congress, and not have allowed nearly five years to elapse before taking any step in the matter. However, waiving this point, in the opinion of this office the claim is not satisfactorily established, the testimony adduced not clearly and positively showing that the affiants personally knew of claimant's having the property described as having been abandoned and lost, that it was of the value stated, and that it was actually lost to the claimant solely by reason of the outbreak of the Indians.

This office would not recommend the allowance of the claim as presented. The papers inclosed in your letter are herewith returned.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

Hon. H. G. DAVIS,
United States Senate.

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 18, 1873.—Agreed to and ordered to be printed.

Mr. PRATT, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the memorial of Richard J. Murray, of the State of Mississippi, praying to be restored to the pension allowed him by special act of March 3, 1857, as also the recommendation of numerous citizens of the States of Mississippi and Alabama to the same effect, submit the following report :

It appears by reference to the acts of Congress that the name of Mr. Murray was directed to be placed on the roll of invalid pensioners at the rate of eight dollars per month, to commence on the 1st day of December, 1855, to continue during his natural life. (See act of March 3, 1857, 11 U. S. Stat., 515.)

He complains in his memorial that during the late war his name was dropped from the roll, but restored on proper application afterward, but at the reduced rate of six dollars per month.

Upon corresponding with the Pension Office to learn the cause of the reduction, it appears it was made under the provisions of the act of July 27, 1868, which provided that pensions granted by special act of Congress should be subject to be varied in amount according to the provisions and limitations of the pension laws.

The act of July 7, 1870, however, construes this section so as to exempt from its provisions all pensions the amount of which is fixed in the act granting the same, and restores to the persons affected by the provisions of the above-cited act of 1868 any sums withheld from them.

Reviewing the action of his office in the light of the act of Congress of 1870, the Commissioner of Pensions assures the committee that the name of Mr. Murray will be restored to the roll at the amount fixed by the special act from the date of the reduction, deducting the amount since paid at the reduced rate.

No relief is therefore required at the hands of Congress, and the committee therefore ask to be discharged from the further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 19, 1873.—Agreed to and ordered to be printed.

Mr. INGALLS, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, having had under consideration the petition of Calvin Chipman, for pension for services during the war of 1812, report:

That the petitioner was placed on the rolls in 1850, and now asks for arrears from 1812 to that date. Believing that this claim is without warrant in law, and that there are no special reasons why it should be allowed, and that to do so would be prejudicial to public interests, the committee report adversely to the claim, and ask to be discharged from its further consideration.

ANNUAL REPORT OF THE COMMISSIONER OF THE LAND OFFICE

FOR THE YEAR 1870

ALBANY: PUBLISHED BY THE COMMISSIONER OF THE LAND OFFICE, 1871.

REPORT

OF THE COMMISSIONER OF THE LAND OFFICE, FOR THE YEAR 1870.

The Commission of the Land Office was organized on the 1st of January, 1870, and has since that time been engaged in the study of the land question. It has held numerous public hearings, and has received many suggestions from the people. It has also conducted extensive research into the various aspects of the land problem, and has prepared this report as a basis for its recommendations.

IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1874.—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

R E P O R T :

[To accompany bill S. 193.]

The Committee on Finance, to whom was referred the bill (S. 103) for the benefit of Uriah Porter, make the following report :

It appears from the letter of J. H. Lewis, accompanying papers of Uriah Porter, that in the year 1857 the said Porter purchased a large tract of land and a number of slaves from John H. Page upon a credit of twenty years, covenanting to pay interest annually. Page made a deed of, but retained a lien upon, the land and slaves.

The Commissioner of Internal Revenue, in his letter of March 26, 1873, decided that when a lien exists upon the land the written consent of the holder of the lien must be given, or a bond, in lieu of such written consent, be taken whenever the distillery was erected prior to July 20, 1868.

Page peremptorily refuses to give his consent. It appears that considerable litigation has taken place between the parties since the war, principally in regard to Porter's liability to pay for the slaves, which in their contract were valued at \$24,000, in consequence of which Page bears no good feeling toward Porter. It is possible that he does not wish Porter to meet the payments, hoping to get the land at a sacrifice. Although Porter had a distillery prior to July 20, 1868, it was destroyed by fire, so that he cannot execute a bond in lieu of Page's written consent.

In the fall of 1871 Mr. Porter, having his distillery completed anew, made persistent efforts to obtain permission to distill, but failed. He began early in the fall of 1872, and at great expense and trouble continued his efforts through the winter, overcoming one obstacle after another, thrown in his way by the district officers, until in March, 1873, for the first time, he was informed that he must obtain Page's consent. Having lost largely by not being able to obtain permission to distill, we recommend that he be granted permission under the provisions of the bill herewith, the passage of which the committee favor.

REPORT

Submitted to the Board of Trustees

At the meeting of the Board of Trustees held on the 15th day of May, 1950

REPORT

of the Committee on the Administration of the University

The Committee on the Administration of the University, created by the Board of Trustees at its meeting on May 15, 1949, has the honor to submit to the Board its report for the year 1949-50. The Committee was organized to study the administrative structure of the University and to make recommendations for improvement. During the year, the Committee held numerous public hearings and received many suggestions from faculty, students, and alumni. It also conducted a detailed study of the administrative functions of the University and compared them with those of other leading universities. The Committee believes that the University is well served by its present administrative structure, but it believes that certain changes are necessary to improve efficiency and to better coordinate the various administrative departments. These changes are suggested in the following report.

The Committee's study was based on a number of factors, including the size of the University, the complexity of its administrative functions, and the need for better communication and coordination. The Committee found that the University's administrative structure is generally sound, but it believes that certain changes are necessary to improve efficiency and to better coordinate the various administrative departments. These changes are suggested in the following report.

The Committee believes that the University is well served by its present administrative structure, but it believes that certain changes are necessary to improve efficiency and to better coordinate the various administrative departments. These changes are suggested in the following report.

IN THE SENATE OF THE UNITED STATES.

JANUARY 7, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill S. 128.]

The Committee on Claims, to whom was referred the bill (S. 128) for the relief of T. C. Callicot, &c., have had the same under consideration, and submit the following report:

At the second session of the Forty-second Congress a bill was introduced for the relief of Alexander McLeod, upon which, with the accompanying papers, this committee made the following report:

IN THE SENATE OF THE UNITED STATES.—REPORT No. 218.—MAY 29, 1872.—Ordered to be printed.

Mr. WRIGHT made the following report, to accompany bill S. 1017.

The Committee on Claims, to whom was referred the bill (S. 1017) for the relief of Alex. McLeod, have duly considered the same, and submit the following report:

In June, 1866, McLeod, in the common pleas court, at Charleston, S. C., impleaded T. C. Callicot, in an action of trover, to recover the sum of \$23,400 for thirty-nine bales of cotton, on the 1st of October, 1865, then, and there, &c. The defendant pleaded not guilty and also specially that said cotton was taken and received by him as supervising and special agent of the Treasury Department, &c. To this there was a replication that the taking was in defendant's own using, &c.

By consent the case was removed to the circuit court of the United States for the fourth circuit.

A trial was had before the honorable Chief Justice of the Supreme Court of the United States in April, 1869. The testimony tended to show that the cotton was the property of plaintiff, weighed 16,400 pounds, worth about fifty-five cents per pound, and was seized by defendant as confiscable—he acting as supervising special agent—was detained by him, and finally turned over to the United States, all of which occurred at Charleston, S. C., from the 1st to about the middle of the month of October, 1865.

Other facts were developed, but they are not deemed material to the understanding of the question made.

The court instructed the jury very fully, directing their attention to two inquiries: first, did the cotton belong to McLeod in October, 1865; and, second, was defendant justified in what he did, by virtue of his office as supervising agent of the Treasury. Upon the second point the instruction was that no Treasury agent was justified in receiving captured property after the 30th of June, 1865, unless theretofore surrendered, much less had he authority to himself make capture of unsurrendered cotton, with or without military aid. The question of fact was then submitted for them to determine, from the evidence, whether this cotton had been surrendered by the authorities of the so-called confederate government prior to the 27th of June, 1865. If it was, then defendant's duty was to receive and transmit it to the authorities of the United States, and plaintiff's only remedy would be in the Court of Claims. Instructions were also given further that it was for the jury to determine whether defendant proceeded under color of the act of June 27, 1865, and if they so found from the evidence, he would be protected, the defense complete, and plaintiff's remedy, if any, would be in the Court of Claims.

The jury found for plaintiff in the sum of \$11,700.68, for which a judgment followed, with \$119.30 costs.

A writ of error was prosecuted to the Supreme Court by Callicot, and was afterward dismissed on the motion of the Attorney-General of the United States, upon the ground that, in his opinion, reversible error was not to be found in the record. The judgment of the court below was thereupon affirmed, with costs in the sum of \$36.10, making the costs of both courts \$156.40. In the court below, as in the Supreme Court, Callicot's defense was in the hands of and conducted by the law-officers of the Government.

The object of the bill before us is to provide for the payment of the judgment and costs above mentioned, with interest on the judgment.

By the eighth section of the act of July 28, 1866, (chapter 298, Statutes at Large, 14,) it is provided that when a recovery shall be had in any suit against any officer of the United States, by reason of any acts done or proceedings had by him under color of the act approved March 12, 1863, entitled "An act to provide for the collection of abandoned property," &c., the payment thereof shall be made out of any moneys arising and obtained from the proceeds of sales, leases, and fees collected and paid over to the Government under the acts of the 12th of March aforesaid and of July 2, 1864, the latter being "An act in addition to the several acts," &c., and to provide for the collection of captured and abandoned property.

It will be observed that the liability of the Government to pay a judgment against an officer, under the act set forth, only arises or attaches when he *acted under color* thereof. In this case the jury must necessarily have found that he did *not* so act for they were expressly told that if he so acted his defense was complete. The conclusion is, therefore, irresistible that claimant cannot count upon the judgment as the basis for a recovery, and hence, if entitled to anything, it must be upon some other theory, for neither under the statute nor upon the principles of the common law would the Government be concluded by the finding of the jury and the judgment following. This is true as to the technical effect of the judgment, and equally so as to its amount. That is to say, if the Government is liable for this property, the amount thereof could not be measured by the judgment, nor, as we think, by the value of the property. For if this property was taken possession of by the Government and sold, its officers acting in good faith, with due care and diligence, and realizing therefor the best possible price, the proceeds thus accruing, deducting the actual and reasonable expenses, would belong to claimant; and to this he would be entitled, and no more. What these proceeds were we have no means of knowing, for upon this subject there is no evidence in the record. Our opinion is, however, that to this extent the claimant is entitled to relief.

By the action of the two Houses at the present session, however, such claims are referred to the Secretary of the Treasury, and as the claimant may there be heard, it seems unnecessary to take further action upon the bill before us. They therefore recommend that the bill referred to them be indefinitely postponed and they discharged.

The recommendation of the committee was concurred in, and the bill indefinitely postponed.

This bill is based upon the same, and not other or different, facts; and we recommend, for the reasons stated in the former report, without presenting others, (which we might,) that a like order of indefinite postponement be made.

IN THE SENATE OF THE UNITED STATES.

JANUARY 7, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

(To accompany bill S. 56.)

The Committee on Claims, to whom was referred the bill (S. 56) for the relief of George Wright, and the accompanying papers, have had the same under consideration and beg leave to make the following report:

This claim was before the Forty-first Congress and referred to the Senate Committee on Patents. That committee made a report, (41st Congress, 2d session, Senate, No. 28,) and a printed copy of the same is herewith reported, and the facts therein stated are made a part of this report.

This committee are of opinion that the claimant is not entitled to be paid anything for his said supposed invention.

1. Because it does not sufficiently appear that he was the inventor of the linch-pin for the invention of which he claims to be paid.

2. The claimant at the time he alleges he invented the said linch-pin, and for a long time next before and after that time, was in the employment of the Government, and the facts and circumstances warrant the inference that if he was indeed such inventor, that he dedicated the same to the use of the Government. The invention had been used for a long while before the claimant applied for a patent, and it was so used at that time. It seems that the patent was an after-thought, and for the purpose of setting up the alleged claim.

3. There is no evidence to show the reasonable value of the invention.

The committee therefore report back the accompanying bill and recommend that it shall not be passed.

IN THE STATE OF NEW YORK

IN SENATE,

January 1, 1877.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE, IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE, APRIL 1, 1876.

ALBANY: PUBLISHED BY THE COMMISSIONERS OF THE LAND OFFICE, 1877.

PRINTED BY THE COMMISSIONERS OF THE LAND OFFICE, 1877.

THE COMMISSIONERS OF THE LAND OFFICE, in response to a resolution passed by the Senate, April 1, 1876, have the honor to submit herewith a report on the condition of the public lands of the State of New York, and on the measures proposed for their improvement and sale.

Very respectfully,
COMMISSIONERS OF THE LAND OFFICE.

IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 82.]

The petitioners, Margaret E. West, widow of Bvt. Brig. Gen. Robert M. West, late captain Seventh United States Cavalry, and sundry other respectable citizens of the State of Pennsylvania, represent that the late Captain West entered the United States service as a volunteer, under Andrew J. Porter, in 1856, for five years; that he served out his term on the New Mexico frontier, returning to his family in Philadelphia, April, 1861, and immediately entered the service again as captain First Pennsylvania Artillery, Colonel Bradley commanding, serving with distinction until about six months after the battle of Five Forks, when he was honorably discharged, having been rewarded, during his service, by promotions to major and colonel, and, finally, breveted brigadier-general of volunteers.

In November, 1866, he was appointed captain of Company K, Seventh United States Cavalry, and ordered to report for duty at Fort Riley; was soon again distinguished for meritorious service, and brevetted colonel, serving as such until March, 1869, when he resigned, for the purpose of entering into business as post-trader and contractor at Fort Arbuckle, Idaho Territory, where, six months afterward, he died. The widow is represented as destitute, with three children. Deceased appears to have been a meritorious soldier and serving with honor and distinction for many years; but, however long and faithful the service, and whatever sympathy may be felt for his widow and children, there is nothing stated in the petition which would justify the granting of a pension. Indeed, the petitioners concede that, and ask such an appropriation of money out of the Treasury for the relief of the widow and children as may be deemed proper under the circumstances. It is, therefore, not an application for pension. The committee, therefore, recommend the indefinite postponement of the petition and accompanying bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 9, 1874.—Ordered to be printed.

Mr. SCOTT, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the memorial of the Walnut Grove Gold Mining Company, praying compensation for property destroyed by Apache Indians in Arizona during the years from 1864 to 1869, have had the same under consideration, and submit this report:

By act of Congress, approved June 30, 1864, (4 Stat., 731, sec. 17,) the United States did provide for compensation to be made under certain regulations to persons residing in any State or Territory, for property destroyed by Indians passing from the Indian country into such State or Territory, and a "guarantee to the party so injured an eventual indemnification.

Apparently, under the act of 1834, or under the act of 25th May, 1872, which does not repeat the above greater guarantee, this claim has been examined by the Commissioner of Indian Affairs, who, in his report of January 5, 1873, says that the claim is not without merit, but the amount of loss actually sustained by the direct acts of the Indians is difficult to determine, and recommends that the case be submitted to Congress for its action, with the remark that it was not submitted within the time required by the act of 1834.

Upon an examination of the case this committee find that the act of 1834, under which, apparently, the claim is made, has been repealed by the act of February 28, 1859, (11 Stat., 401, sec. 8,) so far as it provides for indemnification by the United States out of the Treasury for such losses, with the proviso "that nothing herein contained shall be so construed as to impair or destroy the obligation of the Indians to make indemnification out of the annuities, as prescribed in the act."

Evidently it was the intention, that whatever losses were sustained by said depredations should, when ascertained, be retained out of the annuities due the Indians, and not paid out of the Treasury. Whatever amount therefore may be found due these memorialists should be retained out of the annuities due the Indians committing the depredations, if there be any due them; and as this is a question that should be dealt with by the Committee on Indian Affairs, it is asked that the Committee on Claims be discharged from the further consideration of the memorial, and that it be referred, with this report, to the Committee on Indian Affairs.

ANNUAL REPORT

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IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1874.—Ordered to be printed.

Mr. MITCHELL submitted the following

REPORT:

[To accompany bill S. 302.]

The Committee on Claims, to whom was referred the petition of Doctor Edward Jarvis, asking pay for services in compiling statistics for Census, have had the same under consideration, and beg leave to report :

That the petitioner, being a gentleman of distinguished scientific attainments, was engaged by J. D. B. De Bow, then superintendent of the United States Census, to arrange and compile certain statistics which were of great value, and which were published in the Census report. That these services were rendered during the years 1853, 1854, 1855, and were, in the judgment of your committee, very valuable to the Government, and such as could be rendered only by a person of eminent scientific learning, and through his extensive research necessarily occupied considerable time.

Your committee do not deem it necessary to go into the details of Dr. Jarvis's services, but will content itself in submitting the account itself, and the indorsement of it by J. D. B. De Bow, late Superintendent of the Census.

The United States to Edward Jarvis, M. D.

Dr.

1853, 1854, 1855. For professional and clerical labor, investigations of subjects, examining records, making calculations, answering questions, and solving difficulties at the request of J. D. B. De Bow, esq., Superintendent of the Census Department during the years 1853, 1854, 1855, all in connection with the preparation of three census volumes and reports... \$1,500
Dorchester, Massachusetts, January 1, 1856.

WASHINGTON, D. C., January 1, 1858.

I certify that Dr. Edward Jarvis, of Massachusetts, performed the services mentioned by him, though without any agreement as to compensation. As an eminent statistician I deemed it important to advise with him upon many matters, and I frequently referred to his valuable aid in the volumes which I published in the Census Office. Upon the mortality tables his services were especially large and laborious, involving much clerical labor and tedious calculations. Under the law regulating the Census Office I had no power to remunerate Dr. Jar-

vis, but had it been otherwise I should have considered the sum indicated by him to be fair and just, and I therefore recommend its payment by Congress.

J. D. B. DE BOW,
Late Superintendent United States Census.

After fully considering the services rendered, their character and importance, your committee are of the opinion that the claim is a just one, and should be paid. They therefore report the accompanying bill, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 69.]

The Committee on Claims to whom was referred the memorial of William H. Vesey, praying to be relieved of a certain loss sustained while consul at Havre, France, submit the following report :

Mr. Vesey presents the following state of facts as the basis for the relief asked :

On the 27th of March, 1857, he was consul of the United States at Havre, and had been for several years previously. During all this time he had been in the habit of depositing moneys received by him in his official capacity with the banking-house of Green & Co., American bankers at Paris, with a branch at Havre, for safe-keeping. On that day there remained on deposit in the hands of said firm the sum of \$1,467.30, at the time they failed and became insolvent. On settlement of their affairs Mr. Vesey has received 10 per cent. of his deposit, or \$146.73, leaving a loss of \$1,320.57. Notwithstanding the failure, Mr. Vesey paid the amount of his deposit into the Treasury of the United States.

He asks Congress to refund him the sum of \$1,320.57, and says he has executed an assignment to the United States of all his right, title, interest, and claim to the moneys still due from Green & Co.

The present minister to France recommends the relief of Mr. Vesey.

The Secretary of the Treasury makes no recommendation, but admits that Mr. Vesey has paid the amount of the loss into the Treasury.

The chief clerk in the State Department pays a high compliment to Mr. Vesey as a faithful officer, and says that full confidence may be placed in his statements.

The Secretary of State expresses his confidence in Mr. Vesey's account of his loss, and says this gentleman was for many years in the employ of the Government under his Department in several consulates, and enjoyed a high reputation for integrity, capacity, and the faithful discharge of all the duties of his position.

That the money was lost by the failure of the bankers; that it was funds belonging to the United States, though standing to the credit of Mr. Vesey; that it has been made good to the United States, are facts which the committee assume as established. The evidence is not before us showing the standing and reputed solvency of Green & Co. at the time of failure, though from the report made to this body on May 23,

1860, by the Committee on Foreign Relations, it would seem there was satisfactory evidence before them that up to the date of their suspending payment the credit of Green & Co. was good, and their branch-house at Havre regarded a safe place for the deposit of moneys, better much than the keeping of them by Mr. Vesey, either at the consulate or at his residence. Such is the testimony of Mr. Mason, at that time minister from this country to France.

We think the evidence shows that the consul was not guilty of want of caution in making his deposits with this banking-house, if he chose to commit public funds to the hands of others at all for safe-keeping.

The deposit, however, was at his risk. He was bound to account for all the consular fees collected, and he confessed his liability at law by promptly accounting for the money.

Shall he or the Government be the loser? The committee are of opinion that Mr. Vesey should be relieved, and accordingly report a bill herewith, and recommend its passage.



IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1874.—Agreed to and ordered to be printed.

Mr. DAVIS, from the Committee on Claims, submitted the following

R E P O R T :

The Committee on Claims, to whom was referred the claim of Julius Frank, to be compensated for sutler-supplies seized by order of General Thomas, in 1864, have considered the same, and make the following as their report :

This claim was first presented for the consideration of the Senate March 13, 1871, and was then referred to the Committee on Claims. On the 1st of April, 1872, the committee reported, (through its chairman, Judge Howe,) recommending that the petition be indefinitely postponed, but no action was taken on this report so far as appears from the papers now in the hands of the committee. On the 8th December last the petition was again referred to this committee.

Mr. Frank claims that in April, 1864, he was sutler for the Twentieth Regiment of Connecticut volunteers; that at Anderson, Tennessee, some goods of his were seized by order of the chief quartermaster at Nashville, condemned for a violation of military orders, sold, and the proceeds applied to hospital purposes. These proceeds amounted to \$610.73, which were paid him, subsequently, upon his application, the War Department appearing to be satisfied that the goods had been condemned under a misapprehension of the facts. He now claims the goods to have been of the value of \$3,225.90, and petitions to be allowed the balance of their alleged value, which he states to be \$2,625.17.

For the reasons elaborately set forth in the report submitted by the committee April 1, 1872, (see Report No. 98, 42d Congress, 2d session,) the committee are of opinion that the claim ought not to be allowed, and therefore recommend that the petition be indefinitely postponed.

The following is a list of the names of the persons who have been elected to the office of Justice of the Peace for the year 1875. The names are given in alphabetical order of their surnames. The names of the persons who have been elected to the office of Justice of the Peace for the year 1875 are: [illegible text]

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 68.]

The Committee on Claims, to whom was referred the memorial of Hiram Prather, of North Vernon, Indiana, late lieutenant-colonel of the Sixth Regiment Indiana Volunteer Infantry, submit the following report:

The evidence shows that the Sixth Regiment Indiana Volunteer Infantry was organized in April, 1861, for three months' service under the call of the President of the United States, dated April 15, 1861; that said Hiram Prather was duly commissioned by the governor of the State of Indiana lieutenant-colonel of said regiment, and served in that capacity in the field until the 2d day of August, in that year, when the term of service of the regiment expired. They further find that permission had, in the mean time, been obtained by Governor Morton, from the President and Secretary of War, to re-organize all of the three-months' regiments (including the Sixth) for a term of three years, with the understanding that those of the original field-officers who would engage in recruiting and re-organizing their regiments should continue to hold their former rank under their original commissions.

They find that the said Sixth Regiment was recruited and re-organized under the direction and principally through the efforts of the former colonel and Lieutenant-Colonel Prather, and was mustered into the service on the 20th September, 1861, except one company, which was mustered in a few days later; that Lieutenant-Colonel Prather was re-mustered on his original commission September 20, 1861, for a term of three years; that he served as such lieutenant-colonel in the field until the 19th day of May, 1862, when his resignation was accepted and he was honorably discharged; that his services in recruiting and re-organizing the regiment for the three years' service were faithfully rendered, employing all his time from the 2d day of August, 1861, to the 20th day of September following, for which he has received no compensation whatever. They find that it was the understanding of the governor and Colonel Prather that the United States would allow and pay the latter the regular compensation of his rank for the time employed and services rendered in recruiting and re-organizing said regiment.

The committee thereupon report herewith the accompanying bill for the relief of Lieutenant-Colonel Prather.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1874.—Agreed to and ordered to be printed.

Mr. BOUTWELL, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of George Herring, of Alleghany County, Md., for remuneration for a quantity of whiskey and other spirituous liquors destroyed, as is alleged, by Captain George H. Braganier by the exercise of usurped authority, report :

That the prayer of the petitioner ought not to be granted.

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IN THE SENATE OF THE STATE OF NEW YORK

January 14, 1891 - Reported and ordered to be printed

Report of the Committee on Education, in relation to the

REPORT

The Committee on Education, in relation to the
of the State of New York, for the year 1890.
and other matters connected with the
of the State of New York.

That the report of the committee be printed.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1874.—Agreed to and ordered to be printed.

Mr. BOUTWELL, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Caroline L. Hoey, of the parish of Jefferson, in the State of Louisiana, report:

That the petitioner represents that the buildings and other property situated in said parish and belonging to her late husband, John Hoey, were used and destroyed by the military authorities of the United States in the year 1862, 1863, and 1864. It appears from the representation of the petitioner that the buildings were used for military quarters, and the amount claimed for use and damage to the real estate, and the value of personal property destroyed or appropriated, is \$30,372.

It is not necessary in this case to consider the liability of the United States to indemnify parties suffering losses under circumstances such as are alleged by this petitioner, as the testimony tending to establish the value of the property destroyed and the loyalty of the claimant's husband is unsatisfactory. The committee are of opinion that the claim of the petitioner ought not to be allowed.

IN THE SENATE OF THE UNITED STATES

January 14, 1871—Report to the Senate

Mr. DODD, from the Committee on Claims, reported the following

REPORT

The Committee on Claims, to which was referred the petition of John A. Dodgson, of the State of Tennessee, in the case of the petitioners, report that the petitioners represent that the buildings and other property situated in said parish and belonging to her late husband, John A. Dodgson, were seized and destroyed by the military authorities of the United States in the year 1862, 1863, and 1864. It appears from the report of the petitioners that the buildings were used for military purposes, and the amount claimed for use and damage to the said estate and the value of personal property destroyed or appropriated is \$30,000. It is not necessary in this case to consider the liability of the United States to indemnify petitioners suffering losses under circumstances as alleged by the petitioners, as the testimony tending to establish the value of the property destroyed and the loyalty of the claimant's husband is unimpeached. The committee are of opinion that the claim of the petitioners should not be allowed.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1874.—Agreed to and ordered to be printed.

Mr. BOUTWELL, from the Committee on Claims, submitted the following
R E P O R T :

The Committee on Claims, to whom was referred the petition of M. C. Mordecai & Co., praying that compensation be made to them for carrying the mails of the United States from Charleston, S. C., to Havana, Cuba, in the year 1859, report :

That it is admitted by the petitioners that no contract existed for the transportation of the mails, and although it is alleged that the General Post-Office assented to the performance of the work as proposed by Mordecai & Co., there is no evidence in the case beyond the representation of the petitioners tending to show that the statement is true; nor is there any evidence beside the representation of the petitioners that the service was performed.

The committee are of opinion that the claim of the petitioners should not be allowed.

IN THE SENATE OF THE UNITED STATES

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE

REPORT

Presented to the Senate of the United States at the second session, 1870, in answer to a resolution of the Senate, passed May 12, 1869, relating to the report of the Commissioners of the Land Office, made at the first session, 1869.

That it is admitted by the petitioners that no contract existed for the transportation of the mails, and although it is alleged that the United States Office secured to the petitioners the right to transport the mails, yet it is not shown that the petitioners were ever paid for the transportation of the mails. The petitioners also claim that they were never paid for the transportation of the mails, and that they were never paid for the transportation of the mails. The petitioners also claim that they were never paid for the transportation of the mails, and that they were never paid for the transportation of the mails. The petitioners also claim that they were never paid for the transportation of the mails, and that they were never paid for the transportation of the mails.

IN THE SENATE OF THE UNITED STATES.

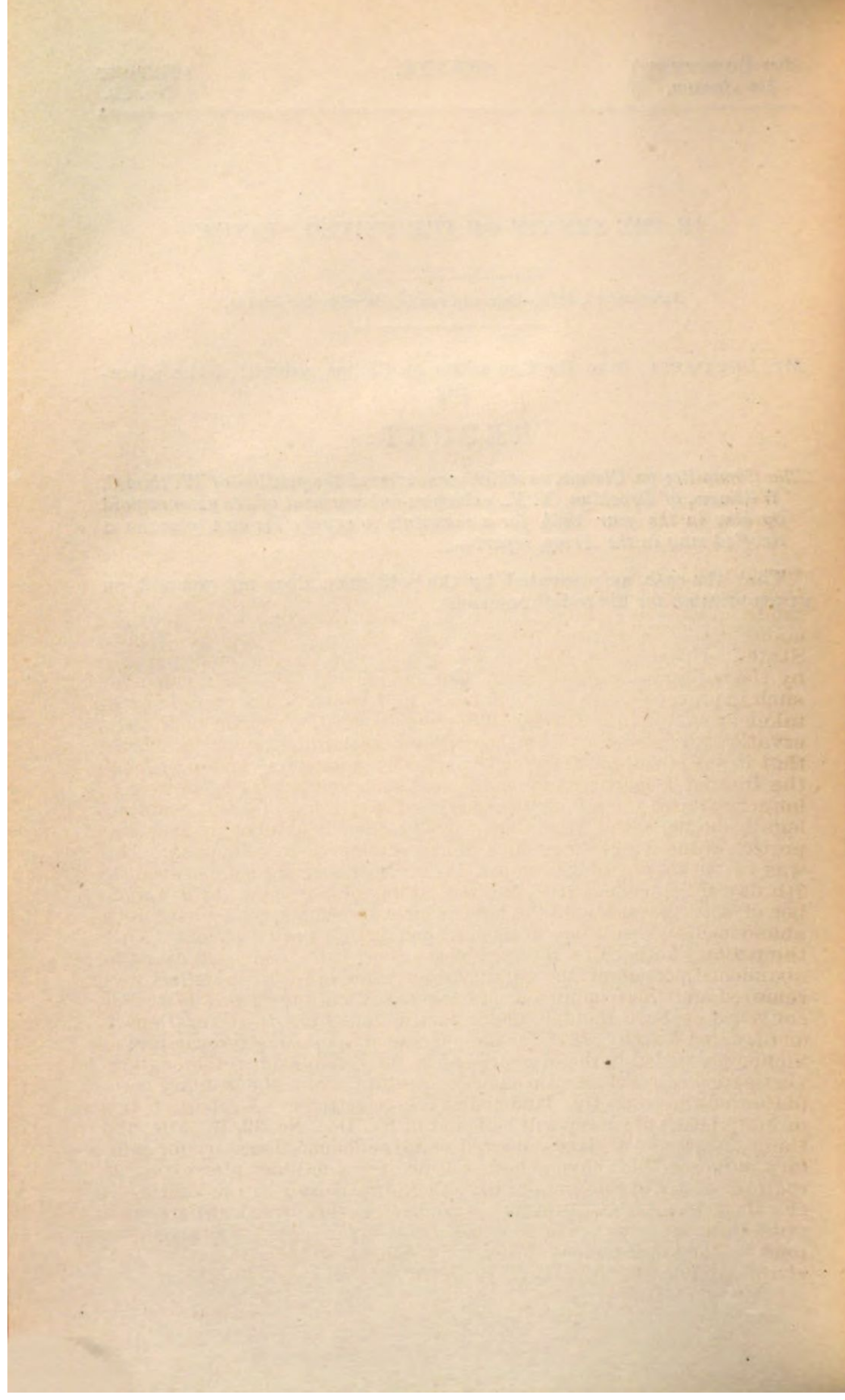
JANUARY 14, 1874.—Agreed to and ordered to be printed.

Mr. BOUTWELL, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to which was referred the petition of William C. Williams, of Brooklyn, N. Y., asking re-imbusement of the amount paid by him in the year 1864 for a substitute to supply his own place as a drafted man in the Army, report—

That the case, as presented by the petitioner, does not warrant an appropriation for his re-imbusement.



IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1874.—Ordered to be printed.

Mr. KELLY submitted the following

R E P O R T :

[To accompany bill S. 149.]

The Committee on Military Affairs, to whom was referred the bill (S. 149) for the relief of certain settlers on the Fort Randall military reservation, having had the same under consideration, report as follows :

Prior to the year 1860 certain persons settled upon public lands which were in that year included within the Fort Randall military reservation, and made improvements upon their respective claims. These lands were taken up in good faith, and under the impression that titles could legally be secured to them under the land laws of the United States. Upon the reservation being made, the settlers were removed by the military authorities from their land-claims, and had to abandon such improvements as they had made, and which could not readily be taken away. On the 7th day of September, 1867, a portion of the reservation was abandoned by the military authorities under the belief that it was lawful for the War Department to abandon and transfer to the Interior Department for settlement such military lands as were no longer required for military purposes. Discovering that this could not legally be done, the War Department resumed jurisdiction over this portion of the reservation which it had attempted to relinquish. This was on the 1st day of November, 1870. In the mean time, between the 7th day of September, 1867, and the 1st day of November, 1870, a number of settlers went upon the lands which were supposed to have been abandoned, and made improvements upon their respective claims. After the military authorities resumed possession and jurisdiction over this abandoned portion of the military reservation in 1870, the settlers were removed and their improvements taken. A military board of survey convened at Fort Randall, under instructions from the War Department, dated March 3, 1871, for the purpose of appraising these improvements, proceeded in the discharge of its duty, and made a thorough investigation of all claims for damages resulting from the military occupation of the respective land-claims of the settlers. A report of this military board of survey will be found in Ex. Doc. No. 32, H. of R., 42d Cong., 3d sess. The lands referred to are no longer necessary for military purposes ; but, having been selected for a military reservation, it requires an act of Congress to have them transferred to the control of the Department of the Interior. Inasmuch as the persons who settled upon these lands did so in good faith, it is but just that they should be paid for the improvements which they made upon their respective land-claims, and of which they were deprived without any fault of their own.

2. SETTLERS ON FORT RANDALL MILITARY RESERVATION.

The committee have reported an amendment to section 3 of the Senate bill, providing that, in case any settler shall have received back any portion of the property taken from him by the military authorities, after the appraisement thereof by the board of survey, he shall not in such case receive payment for the same.

With this amendment, the committee recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1874.—Agreed to and ordered to be printed.

Mr. INGALLS submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of James A. Hyde, asking for arrears of pension from June 14, 1865, to May 22, 1871, have had the same under consideration, and report :

That the application is based upon the alleged ignorance of the petitioner as to the limitation prescribed by the statute, unsupported by evidence of any facts that would warrant a departure from the provisions of the law and the established usage of the Department. The committee, therefore, report adversely to the petitioner, and ask to be discharged from further consideration of the claim.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1874.—Agreed to and ordered to be printed.

Mr. INGALLS, from the Committee on Pensions, submitted the following

R E P O R T :

The Committee on Pensions have had under consideration the application of Samuel Spalding for arrears of pension for services in the war of 1812, from 1814 to 1835, amounting to \$2,016, which the petitioner prays may be allowed, with interest. It appears from the records in the Pension-Office that there is no evidence that the applicant was wounded or injured in the service; that he received a pension at the rate of \$6 per month from 1835, and is now receiving \$8 per month under the act of Congress approved February 14, 1871. There is no additional evidence which would warrant a departure from the law and the established precedents of the Department, and the committee, therefore, report adversely to the petitioner, and ask to be discharged from further consideration of the case.

IN THE STATE OF THE UNITED STATES

REPORT OF THE COMMISSIONER OF THE LAND OFFICE
FOR THE YEAR 1884

THE LANDS OF THE UNITED STATES ARE THE PROPERTY OF THE PEOPLE, AND IT IS THE DUTY OF THE GOVERNMENT TO MANAGE THEM FOR THEIR BENEFIT.

REPORT

The Commission on Lands has had under consideration the report of the Surveyor General, and has the honor to submit herewith its recommendations. The Commission is of the opinion that the lands of the United States should be managed in the most economical and efficient manner possible, and that the proceeds of the sale of such lands should be used for the benefit of the people.

IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1874.—Agreed to and ordered to be printed.

Mr. INGALLS, from the Committee on Pensions, submitted the following

REPORT :

The Committee on Pensions have had under consideration the memorial of Lizzie M. Mitchell, widow of Capt. John Mitchell, praying for a pension.

There is no evidence showing that the deceased died from wounds or injuries received in the service.

The committee, therefore, report adversely to the petition, and ask to be discharged from the further consideration of the claim.

THE REPORT OF THE

COMMISSIONERS OF THE

LAND OFFICE

REPORT

The Commission on the Land Office has been organized by the President of the United States, and its members are the Hon. John C. Smith, Secretary of the Interior, and the Hon. John C. Smith, Secretary of the Interior.

IN THE SENATE OF THE UNITED STATES.

JANUARY 16, 1874.—Agreed to and ordered to be printed.

Mr. PATTERSON, from the Committee on Pensions, submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Hannah W. Vreeland, praying for a pension, submits the following report :

Papers show she is the youngest daughter of Jonathan Barbrick, a corporal in the Twenty-first Regiment of Infantry in the Revolutionary Army; that he received a pension from March 7, 1786, to the date of his death, 22d June, 1827; that her mother, Mary Barbrick, wife of the pensioner, died April 30, 1836; that her mother, while a widow, did not receive any pension on account of the services of her husband, but had she lived until July 4, 1836, she would have been entitled to one from the date of the death of her husband, as provided by act of July 4, 1836. The petitioner now prays that the pension be granted to her which her mother would have been entitled to under said act of July 4, 1836. She bases her claim on the ground that the death of her mother a few months before the passage of the act deprived her mother and her children of the benefit of the act; that the amount which her mother would have received had she lived until July 4, 1836, being \$840, and that this petitioner supported her mother by her own labor from the death of her father, Jonathan Barbrick, until her mother's death; that she (the petitioner) is now very old and feeble, and in great want. I inclose the letter of the Commissioner of Pensions, showing why the case does not come under the law authorizing him to grant pensions. I should think it a case for special action by Congress, and recommend that the benefit of the act of July 4, 1836, be granted to this petitioner.

Overruled by the committee, and ordered to report adversely.

IN THE SENATE OF THE UNITED STATES.

JANUARY 16, 1874.—Agreed to and ordered to be printed.

Mr. PATTERSON submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Amelia Ferguson, widow of Prof. James Ferguson, of the Naval Observatory at Washington, D. C., praying for a pension on account of the services of her husband to the Government, report :

That the papers show that Professor Ferguson was distinguished in the cause of science, faithful in the discharge of his duty, and during his whole life was in the employ of the Government, and it is claimed his death was caused by overwork and exposure in performing his duty. The pension-laws do not provide for such cases, and while it may be right for the Government to provide some bounty in instances like this, yet the committee see no reason why this case should be made the subject of special action by Congress.

IN THE STATE OF THE UNITED STATES

That the said...

...

REPORT

The undersigned...

That the undersigned...

IN THE SENATE OF THE UNITED STATES.

JANUARY 16, 1874.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill S. 316.]

The Committee on Pensions have had under consideration the petition of Elizabeth F. Thompson, praying to be allowed a pension, and report as follows :

It appears that the deceased soldier, Moses Goodwin, was the nephew and adopted son of the petitioner; that he died in the line of duty; that the petitioner was dependent upon the deceased for support, and is in destitute circumstances. The committee report favorably, and recommend that the petitioner be placed upon the pension-rolls at the rate of dollars per month.

○

IN THE SENATE OF THE UNITED STATES.

JANUARY 16, 1874.—Ordered to be printed.

Mr. CLAYTON submitted the following

REPORT:

[To accompany bill S. 317.]

The Committee on Military Affairs, to whom was referred the petition of Henry C. Smith, praying that he may be allowed the pay of a second lieutenant from June 10, 1865, to June 18, 1865, and the pay of first lieutenant from June 18 to November 25, 1865, submitted the following report:

Henry C. Smith was mustered into service as a veteran volunteer in Company A, Thirty-sixth Indiana Volunteers, on December 21, 1863, was promoted first sergeant May 14, 1865, and was borne upon the rolls and received pay as first sergeant until mustered out of service, November 25, 1865.

Company A, Thirty-sixth Indiana Volunteers was consolidated with the Thirtieth Indiana Volunteers, and was known as Company H, Thirtieth Indiana Volunteers.

Smith was commissioned as second lieutenant in Thirty-sixth Indiana Volunteers by the governor of the State of Indiana, but was not mustered into service, June 1, 1865. He was also commissioned as first lieutenant in Thirtieth Regiment by the governor of Indiana on June 2, 1865, but never mustered.

Smith claims pay of second lieutenant from June 10, 1865, to June 18, 1865, and pay of first lieutenant from June 18, 1865, to November 25, 1865, the date he was mustered out of service.

The records show that Company A, Thirty-sixth Indiana Volunteers, was, before consolidation with the Thirtieth Indiana Volunteers, reduced below the minimum strength, and was not entitled to a second lieutenant during the period for which Smith claims pay.

The records of Company H, Thirtieth Indiana Volunteers, show that while the name of Isaac Dulhagen was borne upon the rolls as first lieutenant during the entire period for which Smith claims to have acted as first lieutenant, they also show that the said Dulhagen was reported absent without leave from June 22, 1865, and never returned to his company, nor has he received pay for services rendered during that time.

Captain John P. Swisher is reported as absent upon detached duty. Smith furnished evidence to show that he did the duty of first lieutenant Company H, Thirtieth Indiana Volunteers, during the period for which

he claims pay; and the records show that no other commissioned officer was present with the company during the period specified, and that no person has been paid for the services claimed to have been rendered by Smith.

In view of these facts, your committee recommend that Henry C. Smith, late of Company H, Thirtieth Indiana Volunteers, be allowed the pay and allowances of a first lieutenant from June 18, 1865, to November 25, 1865, less the amount already received by him as pay of first sergeant.

○

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1874.—Ordered to be printed.

Mr. KELLY submitted the following

REPORT:

[To accompany bill S. 341.]

The Committee on Military Affairs, to whom was referred the petition of Anderson J. Smith, having had the same under consideration, report as follows:

Anderson J. Smith, late a sergeant in Company C, Seventy-seventh Regiment of Illinois Volunteers, was captured by the rebel forces at the battle of Mansfield, up Red River, on the 8th day of April, 1864, and was detained as a prisoner from that time until the 17th day of May, 1865, at Camp Ford, in Texas. During this period he appears to have rendered much needful service as a physician and surgeon to United States prisoners at that place.

On the 22d day of July, 1864, he was commissioned by Governor Yates a first lieutenant of Company A, One hundred and thirtieth Regiment Illinois Volunteers, with rank from May 6, 1864; but owing to the fact that he was detained a prisoner of war, never received his commission as such. On the 17th day of June, 1865, he was discharged from the service of the United States at Springfield, Ill.

Inasmuch as he was unable to perform the duties of first lieutenant by reason of confinement as a prisoner of war, the committee consider that he is entitled to payment as such, and report a bill accordingly.

REPORT

of the

Commissioners of the

General Land Office

for the year ending

June 30, 1892

Presented to the

Senate and House of Representatives

at their respective sessions

January 15, 1893

Washington

Printed by the

Government Printing Office

1893

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1893

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill S. 157.]

The Committee on Claims, to whom was referred the bill (S. 157) for the relief of Joseph Nock, and the memorial of the latter, dated May 9, 1872, addressed to the Committee on Claims of the two Houses of Congress, submit the following report :

The bill recites that Nock was the inventor and patentee of certain valuable improvements in self-locking padlocks for mail-service; and that the Postmaster-General entered into a contract with him to manufacture and furnish all the padlocks for the entire postal service of the United States; and that, in order to have exclusive control of the first and most valuable patent for self-locking padlocks, the said Nock was required to assign all his right, title, and interest in his patent of July 16, 1839, to the United States; and that the Postmaster General annulled the contract and refused to re-assign said patent to Nock, thereby preventing him from enjoying the benefits of said invention or of disposing of it for several hundred thousand dollars as he had opportunity to do; and that the Post-Office Department subsequently contracted for and was supplied with over 100,000 self-locking padlocks, embodying Nock's patent fully and still in use; and the bill then enacts that the Secretary of the Treasury shall pay to the said Nock the sum of \$300,000, in full payment of any and all claims against the United States, for the sole use, control, and appropriation by the Post-Office Department of Nock's said patent.

Accompanying the bill and memorial is a large number of papers, reports, and documents, which, in the view of the committee are disposed to take of the case, need not be considered in detail.

There is some confusion as to the date of the patent. A printed document in the case sets out at length what purports to be the patent; but that is dated the 10th day of October, 1838. In that the United States grant to the said Joseph Nock, his heirs, administrators, or assigns, for the term of fourteen years from the 10th day of October, 1838, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the improvement described in the schedule annexed. But the claim in that patent is the invention of a new and improved *trunk* lock.

Another document, being a bond made to the United States by Mr. Nock and one Eastman, dated the 28th day of October, 1840, recites letters-patent granted to Nock on the 16th day of July, 1839, securing

to him the exclusive right of "making and manufacturing locks upon a principle of his own invention."

It is presumed the latter is the patent out of which the present controversy grows, for Mr. Pugh, a witness for the claimant, in an affidavit made in 1852, swears that he is acquainted with the structure of the various locks made by Mr. Nock, under his letters-patent, dated the 16th day of July, 1839, and testifies that it is equally valuable to locks of the following varieties, both large and small, viz: Bank-locks, store-locks, locks for dwelling-houses, mortice and ream locks, fire-proof door-locks, night or dead-latch locks, desk-locks, chest-locks, trunk and box locks, book-locks; and also for locks adapted to the sliding-doors of railway-cars, and other like purposes, together with twelve or fifteen varieties of padlocks, all of which various classes of locks were *self-locking*.

The claim in this case, as will be seen by the recitals of the bill, is on account of the sale of his invention to the United States, which, however, sought to utilize only that form of lock used in closing the mail-bags containing the written and printed matter to be transmitted over the post-roads established by Congress.

The instrument under which the United States acquired the exclusive use of so much of this patent as relates to the padlocks securing the safety of the mails, is as follows:

I, Joseph Nock, in consideration of being employed by the Postmaster-General to make mail locks and keys for the United States, at one dollar for the iron lock and fifteen cents for the key to said lock, and at one dollar thirty-five cents for the brass lock, and twenty cents for the key to said lock, to be made upon the principle of my improved locks and keys, as shown by patent bearing date the sixteenth day of July last, do, for the purpose of securing the United States in the exclusive right to use the said locks and keys for the safety of the mails, hereby assign and make over to the United States all my rights, privileges, and powers as patentee in the patent aforesaid in reference to the improvement therein mentioned and described, upon condition, nevertheless, that I, the said Nock, by myself or agents, authorized by me, shall be at liberty to manufacture locks and keys upon the principle of said patent for all other purposes, and to sell and dispose of the same; provided that no lock or key so manufactured and no part of any such lock or key shall correspond in size with the mail-locks which have been or may be adopted by the Postmaster-General, or be so made as to be capable of being used in the construction of said mail-locks, or in opening them; and upon the further condition, that if the Postmaster-General should cease to employ the said Nock at the prices aforesaid, as the exclusive manufacturer of mail locks and keys for the United States, then this assignment shall be null and void, and all the rights, privileges, and powers hereby conveyed to the United States shall revert to me, the said Nock, to be enjoyed, exercised, and disposed of as if this assignment had never been made.

In testimony whereof I have hereunto set my hand and seal this seventh day of March, 1840.

JOSEPH NOCK. [L. S.]

In presence of—

WM. H. DUNDAS.

WM. HALTER.

In this assignment it will be seen is embraced a contract by which the Postmaster-General employed Nock to make mail locks and keys for the United States, at \$1 for the iron lock and 15 cents for the key to the same, and at \$1.35 for the brass lock and 20 cents for the key, to be made upon the principle of his improved locks and keys, as shown by his patent; and in consideration of this, and for the purpose of securing the United States in the exclusive use of said locks and keys for the safety of the mails, Nock assigns to the United States all his rights, privileges, and powers as patentee in reference to the improvement therein mentioned, upon condition that he might, by himself or agents, be at liberty to manufacture locks and keys upon the principle of said patent *for all other purposes*, and sell and dispose of the same, provided they should not correspond in size with the mail-locks which had been

or might be adopted by the Postmaster-General. There is another important proviso, to wit: That if the Postmaster-General should cease to employ Nock, at the prices aforesaid, as the exclusive manufacturer of mail-locks and keys for the United States, then the assignment should be void, and all the rights, privileges, and powers conveyed to the United States should revert to Nock, as fully as if the assignment had not been made.

It appears from the evidence that Nock, when he entered into this agreement, was engaged in manufacturing locks in Philadelphia, where he had a factory, and that on the faith of it he removed his machinery, stock, &c., to Washington, and embarked his means in building a factory here, with the view of carrying out in good faith his contract with the Government.

Subsequently he entered into a bond, with surety, in the penalty of \$10,000 for the faithful performance of his contract. This obligation bears date the 28th of October, 1840.

How many locks and keys the claimant manufactured for the Government under this contract does not clearly appear, but in a statement made by Mr. Nock of the actual damages suffered by him on account of the infraction of the contract, aggregating the startling sum of \$133,326.38, he deducts as receipts from the Post-Office Department \$2,097.25, which we infer was on account of payments for locks and keys manufactured.

In a statement of the case by the Solicitor of the Treasury, who resisted the petition of the claimant in the Court of Claims, it appears the number manufactured and paid for was 200 locks and 600 keys, under an order from the Post-Office Department, and that while the order was pending, Nock received a formal and permanent appointment as manufacturer of mail-locks for the Post-Office Department; that in June, 1840, on a verbal order received from the Third Assistant Postmaster-General for locks and keys, he manufactured 1,200 more of the kind and quality specified in his contract, all of which the Department refused to receive and pay for, and they were accordingly left on his hands, and from that time forward the Department gave him no further orders; but, on the contrary, suspended the contract on the 3d of November, 1840, and on the 21st day of December, 1841, the Postmaster-General annulled it.

It is a further part of the statement of the case that the United States, having the assignment above given, entered into a contract with H. C. Jones, about the 22d of September, 1851, for the manufacture of mail-locks and keys, which remained in force for several years; that, under instructions from the Post-Office Department, the locks to be made by Jones, and actually made by him for the Government, were to be constructed upon the principles of the Nock patent; that the number of locks and keys manufactured by Jones was 97,000 locks and 44,998 keys; and that, after the expiration of Jones's contract, the United States continued to have locks and keys constructed upon the same principle for the use of the Department.

Nock, therefore, claimed then, as he does now, that, as the United States refused to re-assign the patent to him, they ought in justice and equity to pay to him the profit that would have accrued to him in the manufacture of such locks and keys as were in fact manufactured on the principle of his invention and used by the Department subsequent to the annulment of his contract; and also that he should be paid an additional sum for the loss of his patent, the argument being that the assignment of it to the United States prevented its use by him in the manufacture and sale of *any* locks.

This we believe to be the substance of his claim.

Mr. Nock at a very early day came before Congress with his grievances. Reports were made in his case in the House of Representatives in the Twenty-seventh, Twenty-eighth, and Twenty-ninth Congresses. It has been before the Senate and reported on in the Twenty-eighth, Thirty-second, Thirty-third, and Thirty-ninth Congresses. There are lying before the committee now a report made by Mr. Hamlin, from the Committee on Post-Offices and Post-Roads, on April 20, 1852; by Mr. Brodhead, from the same committee, on April 24, 1854; by Mr. Ramsey, from the same committee, on April 23, 1866; by Mr. Foot, from the same committee, February 17, 1853. In addition to this, there is an elaborate printed report covering twenty-nine pages, made by George F. Comstock, while Solicitor of the Treasury, in December, 1852. This report was made to the President of the Senate, in compliance with a resolution of that body, requiring an examination by that officer "of the claim of Joseph Nock, for damages on account of the alleged violation of a contract with the Post-Office Department for supplying mail-locks."

No action was had upon any of these reports, further than to send Mr. Nock to the Court of Claims for an examination into his grievances. When the case was first sent there, it was decided adversely to him, upon the grounds that there was no legal obligation on the part of the Government under the contract to order more locks than it pleased, and that the refusal to re-assign the contract involved no legal obligation of the Government to pay damages.

The case came before the Court of Claims a second time at the December term, 1866, and this time under a joint resolution of Congress, approved June 25, 1866. (See 14 Stat. at Large, p. 321.) The substance of this joint resolution is that the claim of Nock for damages occasioned by the annulment of his contract for furnishing locks and keys for the use of the United States mail, and also for the use of Nock's patent in the manufacture of mail-locks, subsequent to the annulment of the contract, was referred to the Court of Claims for its decision "in accordance with the principles of equity and justice." It was provided, however, that the court should not render judgment for a greater sum than was contained in the report of Solicitor Comstock to the Senate, above referred to. It may be said in passing, that Mr. Comstock found that the sum of \$21,340.25, with interest thereon, was the value of Nock's contract and the sum he ought to be paid for its violation by the Post-Office Department.

Thus it will be seen that, after the case had engaged the attention of both branches of Congress for so many years, it was finally referred for a second time to the Court of Claims, and the extent of jurisdiction conferred enabled the court to embrace in its consideration every element of injury save the alleged damage to Nock from the refusal or failure to re-assign his patent, the life-time of which, it will be remembered, was fourteen years.

Notwithstanding this reference, Mr. Nock was not required to enter this court unless he freely chose to. He could have continued to appeal to Congress for relief and kept his case in that forum until his wrongs were redressed. Instead of this he entered the Court of Claims, submitted to its jurisdiction, brought forward all his proofs, establishing or tending to establish his case, including proofs as to the extent of his losses, and the case was heard and determined. The court, looking over the whole field, awarded to Mr. Nock the sum of \$27,426.00, for which judgment was rendered against the United States. Mr. Nock did

not appeal from this judgment, but acquiesced in it and received the money. And now he is before the Forty-third, as he was before the Forty-second Congress, asking further relief. His bill demands \$300,000 more. No reference is made in it or any other papers to the occurrences in the Court of Claims. The omission to refer to them was probably accidental, as it was accidental that the committee came to learn of the disposition of the case seven years since. With that decision before us and no complaint preferred by Mr. Nock against its justice, (he wholly omits reference to it, indeed,) what should the committee recommend to the Senate for its action? Can we be expected with our limited means of getting at the truth, and the little time at our disposal, to investigate claims against the Government, to consider carefully a case which occupies 29 pages in the carefully-prepared opinion of the Solicitor of the Treasury? No new evidence, whatever, is before us. The same venerable documents, prepared for use in 1852, are spread before us. Many weary eyes have looked over them. Many laborious committees have devoted days and weeks to the case, as is evident in the painstaking reports we have read. It cannot be doubted that, looking to the time consumed by the public servants, money would have been gained if thirty-three years ago, when the case first appeared upon the stage, the whole sum demanded had been paid. If Mr. Nock has been wronged he has had his revenge. He has filled many hearts with dismay, when from a sense of public duty they have felt constrained to sit down to his case.

The committee are of opinion that whether the decision of the Court of Claims is right or wrong Mr. Nock should be bound by it. It was a forum of his own seeking, established to consider such cases, with ample facilities to get at the whole truth, with leisure to hear and examine, and every way much more competent to do exact justice than a committee of Congress. There must be an end of litigation. There should be a reasonable limit to the assertion of claims even against a government.

On the point that the United States have not re-assigned the patent, a word only need be said. The patent expired in 14 years from its issue. There was nothing in the transfer that prevented Nock from manufacturing and selling to anybody and everybody every other form of lock except the padlock needed by the Post-Office Department to secure its mails. Besides, by the very terms of the contract, on its annulment, the assignment of the patent was to be null and void. There is nothing in that portion of the claim. The Court of Claims has passed upon the remainder of it. The judgment has been acquiesced in and paid. It purports to be a finality. It should be and is a finality unless we treat the court's judgments with contempt. There is no suggestion of surprise in the trial. There is no claim that new evidence has been discovered. We are simply appealed to to retry the case, with the hope, on Mr. Nock's part, that we will be more liberal than the court.

The committee recommend the indefinite postponement of the bill and disallowance of the memorial.

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition and accompanying papers in the case of Dr. Samuel Davis, submit the following report :

This case was before the committee of the Forty-second Congress, and was then carefully considered. No new evidence has been submitted by the petitioner.

Dr. Davis was the surgeon of the Eighty-third Regiment Indiana Volunteers, and on or about the 10th of March, 1863, at Young's Point, in the State of Louisiana, he was severely injured by the upsetting of an ambulance, which, rolling down an embankment, fell upon his body, striking and resting upon the lumbar region of the spine. He claims, in consequence of this injury, to be now suffering from hypertrophy of the kidney, enlargement of the spleen, and partial paralysis of the lower limbs. As a result of his injuries he is prevented, as he claims, from practicing his profession, or making a living for himself and family by manual labor. His application is verified by himself and several members of his family.

He early made application to the Pension Bureau, and was placed upon the pension-roll, at first drawing a pension of \$12.50 per month, and subsequently, owing to increase of disability, his pension was increased to \$18.75 per month, and at a later day to \$25 per month. He now asks Congress to increase this to \$50 per month.

The act of March 3, 1873, revising, consolidating, and amending the laws in relation to pensions, makes provision in the third section for cases of permanent specific disability, and likewise for those who have been so totally and permanently disabled in the military service as to render them utterly helpless, or so nearly so as to require the regular personal aid and attendance of another person, and for this class a pension of \$25 per month is provided. There is but one class of pensioners who are entitled by law to a higher rate of pension than Dr. Davis is now enjoying, and that is those who have lost both hands, or both feet, or who have been permanently and totally disabled in the same, or otherwise so permanently and totally disabled as to render them utterly helpless, or so nearly so as to require the regular personal aid and attendance of another person, and this class is entitled to a pension of \$31.25 per month. (See fourth section of said act.) If Dr. Davis's case comes within the purview of the provision just referred to,

he can obtain an increase of the pension he is drawing at the Pension-Office. If it does not, Congress cannot well relieve him by granting what he asks, either in whole or in part, without making an unjust discrimination against other worthy soldiers who have the same claim to be heard that he has, and who would doubtless soon make themselves heard if an exception were made in his favor and placed upon the statute-book, to be seen and known of all men.

The committee dare not establish such an exception, and recommend that the petition of Dr. Davis be disallowed and they discharged from the further consideration of the same.

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Samuel Wilson praying to be allowed a pension, together with a petition from a large number of citizens of the State of Ohio on the same subject, submit the following report :

Mr. Wilson enlisted as a private in Company F, One hundred and sixteenth Regiment Ohio Volunteers, on August 18, 1862, and was discharged April 3, 1863; and he served afterward from September 29, 1864, to July 12, 1865, in Company F, One hundred and eightieth Regiment Ohio Volunteers.

He made application to the Pension-Office in the year 1869 for a pension. His claim was rejected on the 23d of August, 1871.

He alleges his disability to arise from disease of the heart, which has eventuated in the paralysis of his lower limbs.

The rejection of his claim at the Pension-Office was based upon the report of the examining surgeon, George O. Hildreth, of Marietta, Ohio. That report is dated the 3d of July, 1871. It states explicitly that Wilson was not disabled from disease of the heart; that he had been confined to his bed for eleven weeks preceding from paralysis of lower extremities, and that the surgeon did not discover any connection between this paralysis and his cardiac disease. He states, further, that he had consulted with Dr. Hart, skilled in auscultation, and that they did not detect organic disease of the heart.

The history of the soldier is thus given by the examining surgeon :

During a fatiguing march from Petersburg to Romney, in Virginia, in November, 1862, he became disabled from exhaustion and exposure. The disability, marked by paroxysms of smothering and faintness, was called heart-disease, and led to his discharge at Columbus, Ohio, in 1863. At intervals this form of disability has continued to recur. For some years past he has been engaged as engineer on boats or on land. In June, 1870, he was engaged as engineer in a planing-mill in Marietta, on full wages, and so continued until the winter of 1870-'71. He married in August, 1870. In the fall he complained of pains in the back and sides, and in the winter of numbness of the feet and legs, and difficult locomotion. In February he gave up work from increase of disability, which had assumed the form of paraplegia or paralysis of the lower extremities. For the last eleven weeks he has been confined to bed, unable to stand or walk, and is totally disabled from manual labor, and requires the constant aid of an attendant. The disability is permanent. From the character of his disease, I do not perceive any connection with cardiac disease, and am unable to see that the latter enters into the disability now existing in any appreciable manner. He probably at discharge from the service labored under the cardiac affection known as "irritable heart," the paroxysmal recurrence of which at intervals has occasioned more or less disability every year since.

No new evidence has been submitted to the committee, except the certificate of the surgeon in charge at the National Home for Soldiers

at Dayton, Ohio, who certifies that the soldier was admitted to that Home on the 25th of December, 1871, and that his disability at that time consisted of paralysis of the lower limbs, and that he was unable to walk, and that his habits were good, so far as known.

The committee are not satisfied from the evidence before them that Mr. Wilson's present disability has any connection with the cause alleged in his application, which is disease of the heart, and ask to be discharged from the further consideration of his petition.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Mary Ann Daniel, of Yorkshire, England, praying for increase of pension to Major John Townsend Daniel, submit the following report :

That upon application made to the Pension Bureau for information as to the merits of this application for increase of pension, the Commissioner has furnished the committee with the following history of the case.

DEPARTMENT OF THE INTERIOR, PENSION OFFICE,
Washington, D. C., January 15, 1874.

SIR: I have the honor to acknowledge receipt of your communication of the 10th instant, relative to an application for increase of pension presented to your committee by Mrs. Mary Ann Daniel, of Yorkshire, England, in behalf of her son, John Townsend Daniel, some time captain Thirty-sixth New York and major First Maryland Cavalry, and now a pensioner under certificate No. 102,723, and in response thereto to state :

It appears that said John Townsend Daniel, while holding the rank of captain aforesaid, received a gunshot-wound of left leg, at the battle of Fair Oaks, Va., May 31, 1862, and it appearing further that he was, in consequence of said wound, one-half disabled, he was pensioned at \$10 per month, (one-half of total of captain's pension,) commencing July 16, 1863, the date of his muster-out as captain, and deducting therefrom for the period in which he subsequently served as major First Maryland Cavalry, viz, from May 19, 1864, to June 28, 1865.

By letters recently received from his mother, Mrs. Mary Ann Daniel, it is shown that pensioner is now, and has been for some time, an inmate of an insane asylum in England, and an increase of his pension is urged on the ground that his insanity originated during his military service in this country. Mrs. Daniel has been informed that her son was in receipt of all pension to which he is entitled for any disability shown to have originated in service, and that, if additional pension is claimed on account of insanity, proof of its origin must be furnished.

Mrs. Daniel having expressed her inability to procure the necessary evidence to establish the origin in service, she was informed by the honorable Secretary of the Interior, under date of July 10, 1873, that relief, if any, must be obtained through Congress.

Copy of said letter is filed with the papers in the case, herewith submitted.

Very respectfully, your obedient servant,

J. H. BAKER,
Commissioner.

Hon. D. D. PRATT,
Chairman Committee on Pensions, United States Senate.

There has been no evidence submitted to the committee which was not before the Commissioner of Pensions. There is no evidence whatever in support of those material facts in the petition upon which the claim for increase is based. The petition itself is not sworn to. The committee, therefore, ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES
OF THE FIRST SESSION OF THE SEVENTH CONGRESS
JANUARY 1821

REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
ON THE 15TH OF MARCH 1820

ALBANY: PUBLISHED BY J. B. ALLEN, AT THE
OFFICE OF THE COMMISSIONERS OF THE LAND OFFICE,
IN THE SENATE CHAMBER.

1821

The Commission of the Land Office, in compliance with the
resolution of the Senate, passed on the 15th of March 1820,
has the honor to submit to the Senate the following report
of the progress of the business of the office during the
past year. The report is divided into two parts, the first
containing a general statement of the business of the office,
and the second containing a detailed statement of the
business of the office during the past year. The first part
contains a general statement of the business of the office,
and the second part contains a detailed statement of the
business of the office during the past year. The first part
contains a general statement of the business of the office,
and the second part contains a detailed statement of the
business of the office during the past year.

ALBANY: PUBLISHED BY J. B. ALLEN, AT THE
OFFICE OF THE COMMISSIONERS OF THE LAND OFFICE,
IN THE SENATE CHAMBER.

1821

ALBANY: PUBLISHED BY J. B. ALLEN, AT THE
OFFICE OF THE COMMISSIONERS OF THE LAND OFFICE,
IN THE SENATE CHAMBER.

There has been no evidence submitted to the committee which
would justify the Commission of the Land Office in the
proceedings of the past year. The Commission of the Land
Office has the honor to submit to the Senate the following
report of the progress of the business of the office during
the past year. The report is divided into two parts, the first
containing a general statement of the business of the office,
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business of the office during the past year.

IN THE SENATE OF THE UNITED STATES.

JANUARY 24, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Mrs. Jane McMurray, of Carlisle, Pennsylvania, submit the following report:

There is nothing in this case except the petition, and that is not even sworn to. But it should be added that several eminent citizens of that city, and one of the Senators from that State, indorse the petition, and certify to the high character and respectability of the petitioner and to their belief of the truth of her statements and the justice of her claim.

The following is a succinct statement of the allegations of the petitioner. She is the widow of Ezekiel McMurray, who was a soldier in the war of 1812, and was wounded at the battle of Chippewa, from the effects of which wound he suffered much, and eventually died; that, during his life-time, he never applied for or received any pension or bounty whatever from the Government, though having a valid claim thereto; that, subsequent to the decease of her husband, she applied for and received a pension of \$3.50 per month, but this amount was afterward increased to \$4.00, and that Congress finally, by special act, approved February 16, 1869, increased her pension to \$5 per month, to commence from July, 1862. She argues that this action of the Pension Office in originally allowing her claim, and the subsequent act of Congress in increasing the amount of her pension, are to be taken as a clear acknowledgment of its justice. She further argues that, notwithstanding the acknowledged merits of her case, the action thereon was not characterized by that liberality which should be shown toward the aged widow of a veteran soldier.

She represents herself as aged, infirm, and without means, and that her present pension is inadequate to her proper support. That she expended her own private means in the support of her soldier-husband. Her present claim is, that her husband was clearly entitled to a pension from the time he was wounded, in 1814, and that this claim is not any the less valid by reason of not having been presented by the soldier in his lifetime. Her further claim is, that she is clearly entitled to a pension from the death of her husband, which occurred in the year 1840. In conclusion, she prays Congress that her pension may be made to date from the latter year.

This is the substance of her petition, claim, and argument.

Upon turning to the acts of the Fortieth Congress, (15th U. S. Statutes at Large, page 438,) it appears that an act was passed for the relief of this petitioner, giving her, as the widow of Ezekiel McMurray, a pension at

the rate of \$8 per month in lieu of the sum of \$4 per month, then received by her, to commence from the 14th day of July, 1862.

Upon what state of facts or condition of evidence this special act came to be passed does not appear to the committee. Nor are we informed, by the petition or otherwise, what the nature of her husband's disability was upon which she originally obtained a pension at the low rate of \$3.50 per month. Nor is there anything before the committee to show us why her husband lived for twenty-five years after his alleged disability without ever making a claim for a pension, if he was in truth entitled to one.

We must assume, however, that the petitioner's evidence was sufficient to satisfy a former Congress of the justice of her claim; that Congress meted out to her a pension, double in amount to what she was receiving under the general law, and covering a period of more than seven years and a half. That act put her in the present possession of more than three hundred and fifty dollars back pay. We are now asked to extend that act backward for a period of twenty-two years.

But for the respectability of the eminent gentlemen who have indorsed this petition the committee would be ready to characterize the claim itself as extravagant. The act of 1869 was a finality. Congress went to the verge of liberality in doubling her pension and making it relate back so far. It is not to be re-opened, especially upon a naked petition so boldly impeaching the justice of Congress.

The committee therefore recommend that they be discharged from the further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 361.]

The Committee on Pensions, to whom was referred the petition of Scrotha Brashears, of Kentucky, praying for a pension, make the following report:

It appears that petitioner was enrolled in Company B, Seventeenth Regiment Kentucky Cavalry, on September 15, 1864, and honorably discharged September 20, 1865. He alleges disability resulting from measles contracted while in the service, about January 1, 1865. He was treated for said disease in hospital, at Hopkinsville, Ky., in January, 1865.

Petitioner filed his application for pension in September, 1866, but failed to complete the testimony within the five years, and, besides, there was no record evidence of the disability alleged. Upon inquiry at the Surgeon-General's Office for evidence of the treatment of petitioner for measles, as alleged, no records for Hopkinsville, Ky., could be found. The claim was, therefore, rejected by the Commissioner of Pensions.

There is abundant testimony to the sound physical condition of petitioner at and before the date of his enlistment, as well as of his disability at and before his discharge. The surgeon in charge of the hospital at Hopkinsville, Ky., testifies that petitioner was brought to the hospital in January, 1865, and treated for measles, and was sent home on sick furlough on March 5, 1865. The proof also shows that he was taken home by his father, and remained there unable to join his regiment until long after it had been disbanded.

The examining surgeon of the Pension-Office reports the petitioner's present disability to be cough, pain in the chest, inflammatory enlargement of the glands of the neck, and running scrofulous ulcers around the left ear and jaw.

The Commissioner of Pensions deems the claim inadmissible under the general pension law and the evidence, even should the Adjutant-General of the Army make a record of the disability alleged. The committee, in view of the opinion of the honorable Commissioner, have examined the testimony very carefully, and find it to sustain substantially the statements of petitioner. It leaves no reasonable doubt in the mind of the committee that the disability of petitioner resulted, as stated, from the attack of measles while in the service. The accompanying bill is, therefore, reported for his relief.

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 83.]

The Committee on Pensions, to whom was referred the petition of Josiah Brivard, praying for a pension, make the following report:

The petitioner, Josiah Brivard, represents that he was a private in Company E, Eighty-eighth Regiment Pennsylvania Volunteer Infantry, and in the service of the United States in October, 1861, at which time, while on duty as guard, unfortunately met with an accident, at Camp Stokely, having his leg broken. He was treated for said fracture by Assistant Surgeon George H. Mitchell, (who cannot now be found,) at Camp Stokely, and removed to the hospital in Christian street, Philadelphia, below Tenth street, and was there treated for the said fracture until the 15th of December, 1861, when he was transferred to his regiment in Alexandria, Va., and again placed under treatment of the same surgeon who first treated him. Petitioner seems to have recovered entirely the use of his leg, and served out his enlistment; during which time, about August, 1864, petitioner represents that he contracted a disease of the eyes, while on duty, about the time of the battle on the Weldon Railroad and the battle of the Wilderness, from which disease he has become totally blind, but never had any medical treatment for said disease while in the service—treatment being resorted to after returning home, in 1865.

Two of petitioner's comrades testify to the injury to his leg at the time and place stated, and that he was treated by Surgeon Mitchell as stated by petitioner; but they do not seem to know that his eyes were affected while in the service, though they testify to his blindness now. Sundry other citizens of the State of Pennsylvania represent the petitioner as blind and a cripple, and dependent upon the charity of his friends and relatives for a support, and commend him to the consideration of Congress as a citizen worthy of assistance; but there is not a particle of evidence whatever, except that of the petitioner himself, to bring his application within the scope of the pension-laws. If, as alleged, he lost his eyes from disease contracted in the service, he is indeed unfortunate if he is unable to procure the testimony of some one having knowledge of the condition of his eyes while in the service, or of some physician who treated him after his discharge, who might be able to give satisfactory information as to the cause of the blindness, and the probable date at which the disease made its appearance.

The testimony is wholly insufficient, and the committee ask to be discharged from the further consideration of the subject.

THE STATE OF THE UNION

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IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. NORWOOD submitted the following

REPORT:

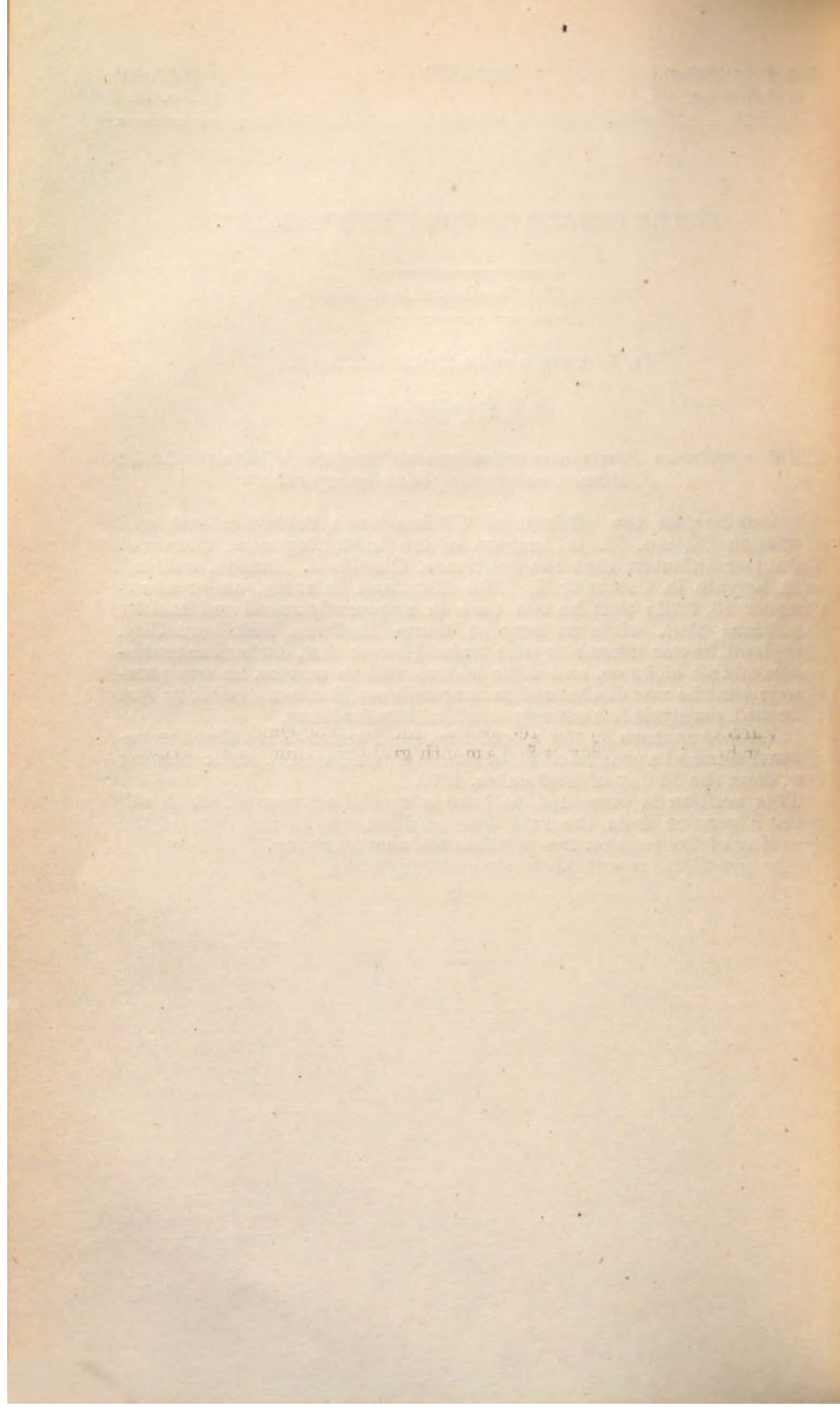
The Committee on Pensions, to whom was referred the petition of Charles J. Hansen, submit the following report:

It appears, on the affidavit of William Louis Schley, colonel, and of Julian Gilman, M. D., surgeon of the Fifth Regiment, Maryland Volunteer Infantry, that the petitioner, Charles J. Hansen, enlisted as a private in Company K, Fifth Maryland Infantry, on or about October 16, 1861; that he was then in apparently sound and healthy condition; that, while on duty at Camp Hoffman, Baltimore City, Maryland, he was taken sick with typhoid fever; that, during the continuance of this sickness, and while he was still in service, he was paralyzed; that he was discharged on surgeon's certificate of disability; and that said paralysis has entirely disabled him for labor.

It further appears by the records in the Pension-Office that the petitioner has had a pension of \$15 a month granted to him, under existing law, from the 3d day of September, 1870.

This petition is presented to have a special act passed, which will grant a pension from the said date of discharge to the date of the granting of the pension the petitioner is now receiving.

The committee report adversely on the petition.



IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Calvin Hess, beg leave to make the following report:

Calvin Hess asks for a pension because, as his petition sets out, he was sick in hospital at Louisville, Ky., in August, 1864; was ordered out to repel an attack made by General Mundy, on which occasion he received a wound in the left fore-arm. Petitioner states that he made application for a pension, and was refused one because he was unable to procure any proof to sustain the facts set up in his petition, and that he is still unable to procure any proof; that the surgeon in charge of the hospital is dead; that the hospital record shows at the time he is stated to have been wounded that he was reported as a "convalescent;" and because the person whom he could prove the wound by is also dead.

With such a statement and confession it would seem to be useless to pursue the case further. It is true the petitioner presents his facts under oath; but it is unaccountable that no proof can be traced in any direction bearing upon the case; nothing can be gained by an appeal to the Pension Bureau.

It is therefore recommended that the case be reported adversely.

OF THE STATE OF THE UNION

1862

THE STATE OF THE UNION

REPORT

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IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. NORWOOD submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Benjamin H. Shepard, beg leave to report :

That a pension was granted to the petitioner of \$ a month, commencing May 5, 1872, according to the general law then and now of force.

The petition now preferred is to have a special act, giving a pension from the 25th day of April, 1866, the date of his discharge.

It is the opinion of your committee that it is impolitic for Congress to enter on this class legislation. The petition is, therefore, reported back unfavorably.

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Edward Marshall, beg leave to make the following report :

In the case of petition of Edward Marshall, Company C, Fifteenth Indiana Volunteers, it seems from the petition and letters referred to this committee, that petitioner was wounded in the service; that he applied for a pension in consequence of said wound, and, under the regulations of the Pension Bureau, was allowed for partial disability \$2 per month, August, 1872.

It also appears that, in 1871, while on his way from Tipton, Indiana, to his place of business, on the 4th of December, during a storm, that, overcome by fatigue and exhaustion, as it is claimed, in consequence of the wound inflicted upon his thigh in 1863, he was compelled to remain exposed to the storm, so that his feet became frozen, and afterward had to be and were amputated, January, 1872. It will be noticed that the loss of his feet occurred January, 1872, and that pension at the rate above stated was allowed him in the August following. The accompanying certificate of the examining surgeon, dated November 10, 1873, states that petitioner was not intoxicated on the night his feet were frozen; but this statement is based upon what petitioner and others who saw him stated to the surgeon.

Surgeon further states that the gunshot wound was the prime cause of the present, or then, condition of the petitioner.

There are no other facts presented to this committee in the case, except a letter from the Commissioner of Pensions, dated May 10, 1873, declining to re-open the case.

It would seem from the foregoing that the claim for relief is based solely upon the misfortune which overtook the petitioner in the winter of 1871, by the loss of his feet, after having been frozen on a journey on foot from Tipton to his place of business. Some pretense is made to a claim that the loss of his feet was solely attributable to the wound received in 1863, in the service as a soldier, but there is no testimony upon that point; at least no sworn testimony, not even an ordinary affidavit upon which to rely, to support such a claim. It is not claimed that application for an increase would have been made on account of the original wound. It is therefore recommended that the case be reported adversely.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Sarah Parker, praying for a mother's pension, have had the same under consideration, and report:

That it appears from the evidence that the applicant was twice married; that her second husband was living at the time her sons by her first husband enlisted; that there is no proof that her second husband is dead, or that her sons died of wounds or disease contracted in the line of duty.

They therefore submit that the claim should not be allowed, and ask to be discharged from its further consideration.

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IN THE STATE OF NEW YORK

IN SENATE,
January 1, 1876.

REPORT
OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE, APRIL 1, 1875.

ALBANY: PUBLISHED BY THE STATE OF NEW YORK, 1876.

PRINTED BY THE STATE OF NEW YORK, 1876.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Charles S. and Jane A. Movers, for a pension, beg leave most respectfully to report :

That the petition shows that Charles Movers was a special aid on the staff of his father, Major-General Movers, of the New York State militia, and was present at the battles of Odletown, S. C., and Plattsburgh, N. Y., September 11, 1814, but was not enlisted or enrolled as a soldier, and his name does not, therefore, appear upon any muster-roll; that he is seventy-six and his wife seventy years old, and very limited as to means. No proof whatever is presented in support of this claim of service further than the statement of the petitioners. Both are stated to be highly respectable and reputable persons. Upon such a case, with no proof beyond the mere statement of the petitioners, it would not seem prudent to grant a pension.

The petition further states that petitioners' son, Charles H. Movers, enlisted in the Thirteenth United States Infantry during the late war, and was killed in battle at Collinsville, Tenn., October 11, 1863, and that they cannot obtain a pension on account of the loss of their son, because they cannot show by sufficient proofs dependence upon him for support; that he was young at the time he entered the service, but that if he were now living they would be dependent upon him. The committee feel that it would be hazardous to set the example of granting a pension in such a case, to become, probably, the prolific precedent of claims of a similar nature, which, in all probability, would multiply indefinitely upon every occasion of circumstances like unto this, especially as there is wanting that earnest and satisfactory proof of dependence to give to this claim the character of real merit; and therefore recommend that the case be indefinitely postponed.

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The first of these is the fact that the population of the United States has increased from 3,929,214 in 1790 to 76,212,168 in 1900. This increase has been the result of a number of causes, the most important of which are the immigration of foreign-born persons and the natural increase of the native-born population. The immigration of foreign-born persons has been the result of a number of causes, the most important of which are the desire for a better life, the desire for a better education, and the desire for a better religion. The natural increase of the native-born population has been the result of a number of causes, the most important of which are the desire for a better life, the desire for a better education, and the desire for a better religion.

The second of these is the fact that the population of the United States has increased from 3,929,214 in 1790 to 76,212,168 in 1900. This increase has been the result of a number of causes, the most important of which are the immigration of foreign-born persons and the natural increase of the native-born population. The immigration of foreign-born persons has been the result of a number of causes, the most important of which are the desire for a better life, the desire for a better education, and the desire for a better religion. The natural increase of the native-born population has been the result of a number of causes, the most important of which are the desire for a better life, the desire for a better education, and the desire for a better religion.

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 257.]

The Committee on Pensions, to whom was referred the petition of Eliza Shelton, Nancy Shelton, Cerena Metcalf, Nancy King, Patsey I. Shelton, Sarah Metcalf, Cloa Shelton, and Mary Franklin, citizens of Shelton Laurell, Madison County, in the State of North Carolina, praying that pensions may be granted to them, respectively, as the surviving widows of soldiers who were killed in the service of the United States, have had the same under consideration, and submit the following report:

Petitioners allege that their respective husbands, to wit, Roderick Shelton, David Shelton, James Metcalf, Ellison King, James Shelton, David Metcalf, William Shelton, and Russell B. Franklin, residents of the county and State aforesaid, were enlisted into the service of the United States by Colonel David Fry, who was recruiting for the First Regiment Tennessee Cavalry, in November, 1861, but there being at that time no opportunity of passing the confederate lines to join the Federal forces, the nearest post being distant three hundred miles, they organized themselves into a company, with others, for the protection of themselves, other Union men, and escaped officers and soldiers from rebel prisons. That the organization was soon known to the prisoners of Salisbury, Columbia, and Andersonville, and all prisoners escaping from these prisons, made their way to Shelton Laurell Creek, for protection and sustenance until they could reach the Federal lines. That the confederate authorities made constant efforts to dislodge and break up the organization, which gave them great annoyance, finally offering a general amnesty to all who would come in and take the oath, but petitioners' husbands spurned the proposition—when, on the 19th January, 1863, a considerable confederate force was ordered to destroy the Shelton Laurell settlement, which was done. At the same time petitioners' husbands and several of their children were captured by the confederate forces and shot in presence of petitioners, who were themselves insulted and barbarously whipped, their houses burned or razed to the ground, their property and provisions destroyed, and they left helpless to beg their way to the Union forces for shelter and protection.

Colonel David Fry, of Greene County, Tennessee, late captain Company F, Second Regiment Tennessee Volunteer Infantry, testifies, under date of 7th May, 1870, that he enlisted the aforesaid parties into the service of the United States, on or about the 15th of November, 1861, under authority from the commanding officers of the Federal forces in Kentucky, and that they, with others, assembled in Greene County, Ten-

nessee, on the 15th of November, 1861, for the purpose of marching through the confederate lines to the Federal forces in Kentucky, and did start under his command. But finding all the mountain passes occupied by confederate troops, the march was considered too hazardous to be undertaken at that time; that he therefore ordered the recruits to return to their respective homes and hold themselves in readiness to start at any time that he should notify them; and "that the said recruits, as he has no doubt, then returned under said order to their homes, and while awaiting the order to march were captured by rebel soldiers and shot."

W. W. Rollins, late major United States Volunteers, under date of 25th May, 1869, certifies that he has resided near the homes of petitioners for many years, and knows the facts set forth in the petition to be true.

The fact of the capture and execution of petitioners' husbands by rebel soldiers appears to have been so notorious that no one who has written or petitioned in behalf of their destitute widows and children seems to consider it necessary to furnish any proof of the fact. No one testifies to the capture and execution of the men, not even the petitioners themselves, though witnesses present on the ground. Major Rollins does certify to the facts stated in the petition, but it is clear from the language that he was not present, and only certifies from hearsay. And Captain Fry, after testifying to the enlistment of the men and his abortive attempt to march them through the mountain passes to join the Union forces, qualifies the rest of his affidavit by saying he has no doubt the men returned under his order to their homes, and while awaiting the order to march were captured by rebel soldiers and shot.

The late governor of North Carolina, together with many State officers under him, and members of the legislature, made an earnest appeal to Congress in behalf of petitioners when the petition was first presented, but none of them pretend to vouch for the facts stated.

When this petition was before the Fortieth Congress, the Senate Committee on Pensions made a favorable report, setting out the facts very fully, which seem then to have been sustained by abundant proof, while the proof now before the committee is very meager. Nothing, in fact, is established except the enlistment of the men. Their capture and execution is not proven by any one, and so long a period intervened between the date of enlistment and death as to raise the presumption that they had abandoned all intention of trying to make their way to the Federal Army. It is doubtful, if all the facts were fully proven, whether the character of service which it is alleged the recruits performed would entitle their widows to pensions. The committee think not. They were doubtless loyal men and patriotic, and their melancholy fate excites the sympathies of all in behalf of those they left destitute, but the victims could in no proper sense be considered in the service of the Government. The committee ask to be discharged from the further consideration of the subject.

○

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1874.—Ordered to be printed.

Mr. NORWOOD submitted the following

R E P O R T:

[To accompany bill S. 298.]

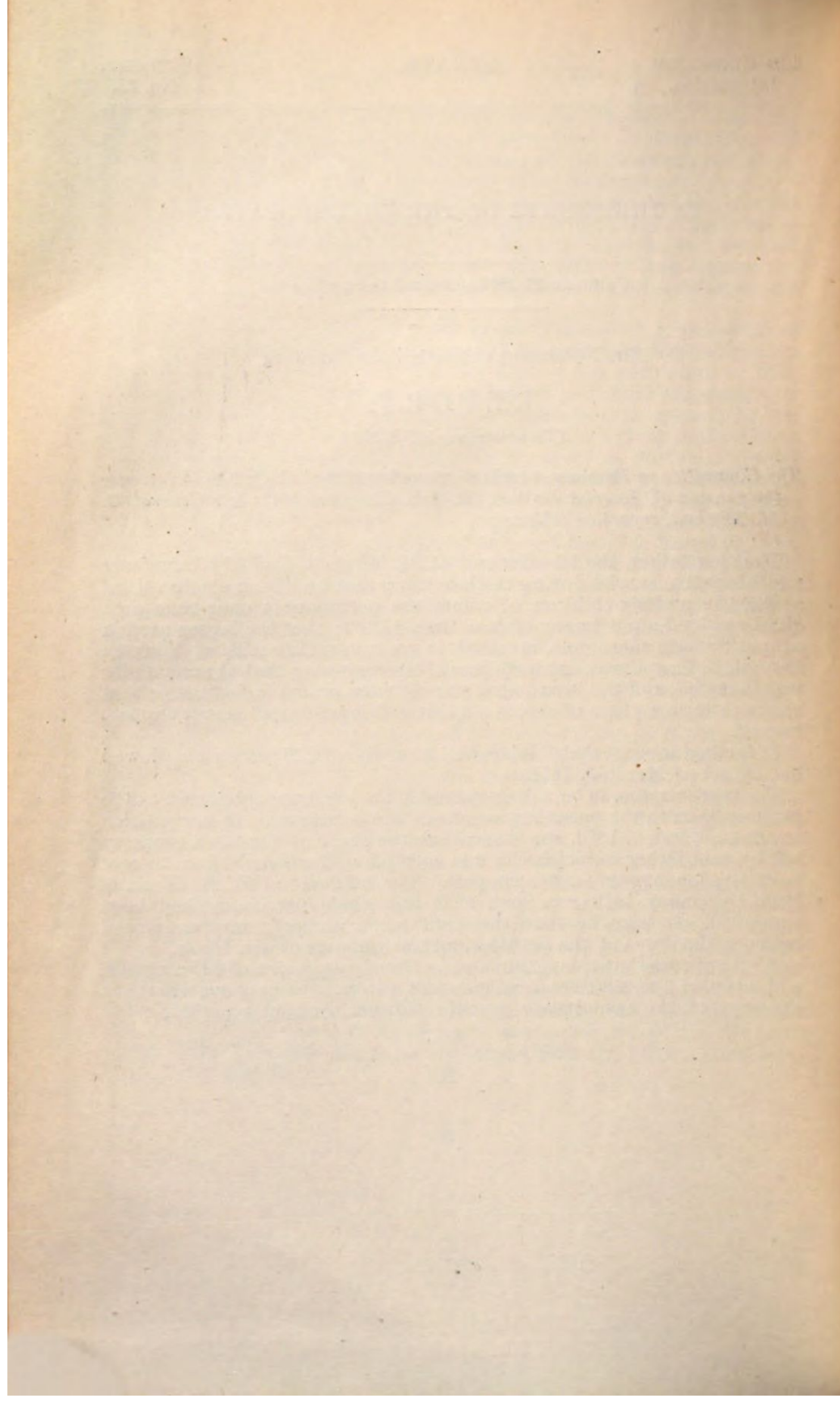
The Committee on Pensions, to whom was referred the bill (S. 298) to increase the pension of Harriet De Witt Mitchell, daughter of the late General O. M. Mitchell, report as follows :

That her father, the late General O. M. Mitchell, died of yellow fever while in active service during the late war; that he left an estate valued at \$30,000 and six children, of whom the petitioner is one; that each child received a patrimony of less than \$5,000; that the larger portion of petitioner's share was invested in an iron-rolling-mill, at Spuyten Duyvil, N. Y., and was lost by failure of the company; that the remainder was invested, and the investment proved more or less unfortunate; that she is thirty-six years of age, is a confirmed invalid, and cannot support herself.

It further appears that she has had a pension of \$25 per month allowed her by act of March 3, 1871.

There seems, too, to be a discrepancy in the evidence submitted to the committee as to the pecuniary means of the petitioner. In her petition sworn to March 8, 1870, she states that the share of the small property left by said father to which she was entitled at the distribution thereof is wholly inadequate for her support. The affidavit of W. B. Hook, of 10th December, 1870, sets forth that the whole patrimony had been expended. It may be that the petitioner's property was exhausted between the dates of the petition and the affidavit of Mr. Hook.

As it appears that the petitioner has already a pension of \$25 a month, and has also five relatives, brothers and sisters, who may contribute to her support, the committee report the petition back unfavorably.



IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1874.—Ordered to be printed.

Mr. NORWOOD submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Mrs. Barbara A. Nock, mother of William H. Nock, deceased, late a private in Company D, Seventy-second Regiment Pennsylvania Volunteers, praying for arrears of pension, beg leave to report:

That they consider it impolitic for Congress to enact special laws to increase pensions in this class of cases, and ask to be discharged from the further consideration of the petition.

○

IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill S. 366.]

The Committee on Military Affairs, to whom was referred the petition of Oliver Powers, to remove charges of desertion and receive back-pay, bounty, &c., report as follows :

This petition shows that Oliver Powers, late private Company K, Tenth Tennessee Cavalry, while on picket-duty near Athens, Alabama, was captured by the enemy, ill-treated, and carried into captivity, &c.; that owing to ill-treatment and robbery of his clothing, he fell sick, was paroled, and left by his captors some thirty miles from Athens, where he remained unable to help himself for six months; then, making his way to his home, under great difficulties and suffering, he found that he had, in the mean time, been reported on the rolls as a deserter, and thus is barred of his honorable discharge, back-pay, &c. This petition is verified and accompanied by affidavit in due form of J. M. Anderson, late first lieutenant Company K, Tenth Tennessee Cavalry, corroborating petitioner's statements, and stating that before this command was mustered out it was the intention of the company commander to change the rolls so as to relieve petitioner from charges of desertion, &c., but that the same was neglected. He also testifies to the courage and soldierly qualities and good character of the petitioner.

An intimate knowledge of the country and the frequent happening of such occurrences, taken in connection with the proof, warrants belief in the facts stated by the petitioner.

The committee report Senate bill No. —, authorizing and directing the Secretary of War to correct the record so as to honorably muster out and discharge Oliver Powers, late private Company K, Tenth Regiment Tennessee Cavalry, and directing the Secretary of War and accounting officers of the Treasury to pay or cause to be paid to said Oliver Powers, late private Company K, Tenth Regiment Tennessee Cavalry, such back-pay, bounty, and allowances as he would have been entitled to receive but for the record of his alleged desertion.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1874.—Ordered to be printed.

Mr. ANTHONY, from the Committee on Printing, submitted the following

REPORT:

The Committee on Printing, to which was recommitted the letter of the Second Auditor of the Treasury, transmitting copies of all accounts received at his office from persons charged with the disbursements of moneys, goods, or effects for the benefit of the Indians, in obedience to the act of June 30, 1834, having examined the same, beg leave to report as follows:

The compilation of accounts thus transmitted by the Second Auditor of the Treasury has been made under the concluding portion of the thirteenth section of the act of Congress approved June 30, 1834, organizing the Department of Indian Affairs, under the direction of the Secretary of War, viz:

And all persons whatsoever, charged or trusted with the disbursement or application of money, goods, or effects of any kind, for the benefit of the Indians, shall settle their accounts annually, at the War Department, on the first of October, and copies of the same shall be laid annually before Congress at the commencement of the ensuing session, by the proper accounting officers, together with a list of the names of all parties to whom money, goods, or effects had been delivered within said year, for the benefit of the Indians, specifying the amount and object for which it was intended, and showing who are delinquents, if any, in forwarding their accounts according to the provisions of this act; and also a list of all persons appointed or employed, under this act, with the dates of their appointment or employment, and the salary and pay of each.

The more bulky portion of the document transmitted by the Second Auditor of the Treasury, is in compliance with that portion of the above-mentioned act which requires that copies of the accounts of all persons whatsoever, charged or trusted with the disbursement or application of money, goods, or effects of any kind, for the benefit of the Indians, shall be laid annually before Congress. The form in which these accounts are thus transmitted is that adopted by the Second Auditor of the Treasury after the passage of the act. There were then twelve Indian agents, and the published copies of their accounts covered a hundred and fifty pages. Now there are twelve superintendents, seventy-one agents, and three sub-agents, and their accounts, if published, will make a large volume, but they will give little insight into the items of expenditure. Large sums are set down as having been expended for "traveling expenses," for "contingent expenses," for "beneficial objects," "&c., &c., &c.," without, generally speaking, any details showing how these sums have been expended. But these "copies of the accounts" have been furnished in this way by the Second Auditor for nearly forty years, and the present incumbent of that office has but followed the example set him by his predecessors. It is due to him to add that the vouchers of each account,

showing every item, are kept classified in his office, subject to the inspection of members of Congress or others who have a right to examine them. To publish accounts giving these items would cost a large sum for copying them, and they would fill some twenty-five or thirty good-sized volumes annually.

The smaller portion of the document transmitted by the Second Auditor of the Treasury is in compliance with that portion of the act of June 30, 1834, which requires him to transmit a list of the names of all parties to whom money, goods, or effects had been delivered during the year preceding for the benefit of the Indians, specifying the amount and object for which it was intended, and showing who are delinquents, if any, in forwarding their accounts, according to the provisions of this act. The form adopted in 1834 has also been followed in this case, and it shows who were delinquents *in forwarding their accounts*. But as these accounts may have been received on the day following the preparation of the report, it does not in any way follow that the delinquents were defaulters or that they had not settled their accounts with all possible promptitude.

The committee would here remark that a document was annually published in former years which gave a detailed account of unpaid balances on the books of the Second and Third Auditors of the Treasury, viz:

1st. Statement of the accounts which have remained unsettled or on which balances appear to have been due more than three years prior to the 1st July, 1863, prepared in pursuance of the directions contained in the second section of the act of 3d March, 1809, entitled "An act to amend the several acts for the establishment and regulation of the Treasury, War, and Navy Departments."

2d. Statement of the names of such officers as have not rendered their accounts within the year, or have balances unaccounted for of the advances made one year prior to 1st July, 1863, as appears by the books of this office, prepared in pursuance of the thirteenth section of the act of 3d March, 1817, entitled "An act for the prompt settlement of the public accounts."

3d. Statement of the names dropped from the report of balances of the three years preceding 1860, 1861, and 1862, in pursuance of the letter of the First Comptroller, dated 24th February, 1843.

The report of the Second Auditor gave the names of those Indian agents who were indebted, after the adjustment of their accounts, to the Government, with the comments of the Auditor thereon. But the committee cannot find that this document has been laid before Congress since the one transmitted to the House of Representatives by Hon. R. W. Tayler, Comptroller of the Treasury, on the 2d of March, 1865. It is reported that the large amount of clerical labor rendered necessary in the Comptrollers' and the Second and Third Auditors' Offices by the war made the preparation of this document impossible. But, on this point, the committee has no official information.

The concluding portion of the act of June 30, 1834, which directed that a list of all persons appointed or employed under that act, with the dates of their appointment or employment, and the salary and pay of each, be also laid annually before Congress, appears to have been ignored since 1851. From 1834 until that date the list, with the additional information required by law, was annually laid before Congress and published; nor can the committee learn why the publication of it was discontinued. It is proper to state that the Indian Office supplies for publication in the Biennial Register a list of its agents and employés, under the act of April 27, 1816, giving their occupations and compensation, but not the date of their appointment.

The committee, after an examination of the facts given, are of the opinion that the Second Auditor of the Treasury has complied with the

act of June 30, 1834, as it has been understood in his office, in furnishing the document which he has transmitted, but that the information contained in that document, giving as it does only general accounts and the names of those who have been delinquent in forwarding their accounts, is not of sufficient public value to justify the expenditure of nearly \$4,000 for its publication. It may, however, be of value to the Committee on Appropriations, as an index which will enable them to examine the vouchers on file in the office of the Second Auditor.

It remains with the Senate to inquire and decide whether the publication of the list of the officers and employés of the Indian Office in the Biennial Register complies with the requisition in the act of June 30, 1834; and whether the publication of the list of unpaid balances on the books of the Second and Third Auditors of the Treasury should not be resumed by the Comptroller.

The committee report that it is inexpedient to print the document transmitted by the Second Auditor of the Treasury, and recommend that it be referred to the Committee on Appropriations.

The first of these is the fact that the United States is a young nation, and that its history is a history of growth and development. It is a history of a people who have been able to overcome many difficulties and to build a great nation out of a small colony. The second fact is that the United States is a nation of immigrants, and that its history is a history of the struggle for the rights of these immigrants. The third fact is that the United States is a nation of free men, and that its history is a history of the struggle for the rights of these free men. The fourth fact is that the United States is a nation of law, and that its history is a history of the struggle for the rights of these laws. The fifth fact is that the United States is a nation of progress, and that its history is a history of the struggle for the rights of these progress. The sixth fact is that the United States is a nation of peace, and that its history is a history of the struggle for the rights of these peace. The seventh fact is that the United States is a nation of justice, and that its history is a history of the struggle for the rights of these justice. The eighth fact is that the United States is a nation of liberty, and that its history is a history of the struggle for the rights of these liberty. The ninth fact is that the United States is a nation of equality, and that its history is a history of the struggle for the rights of these equality. The tenth fact is that the United States is a nation of unity, and that its history is a history of the struggle for the rights of these unity.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

R E P O R T :

[To accompany bill S. 264.]

The Committee on Military Affairs, to whom was referred the bill (S. 264) for the relief of the officers of the Fourth and Fifth Indian Regiments, having had the same under consideration, beg leave to submit the following report :

The report of Mr. Thayer, heretofore submitted to the Military Committee of the Senate, indicates that there was then evidence presented which does not now appear among the papers filed in this case.

The letter of the Secretary of War of February 1, 1872, contains the substance of all the evidence now on file. From this it appears that appointments were issued to the officers of these regiments under the supposition that the regiments were ready for organization, when, in fact, there was no material for this purpose, and they never were organized; consequently their appointments were revoked by Special Order No. 338, August 29, 1863, there being no commands for them.

The joint resolution of June 30, 1864, (Stat. at Large, vol. 13, p. 413,) granted relief to such officers of these regiments as had complied with the orders of Major-General Blunt, and were assigned to and performed duty, and authorized the Auditor to adjudicate the claims, provided each claim was accompanied by the official certificate or orders of the commanding officer (Colonel Phillips) under whom he served that the claimant rendered service.

It is the opinion of the Secretary of War that full provision is made in this joint resolution of June 30, 1864, to cover all services rendered by the officers in question.

Your committee concur in this opinion, and believing further action unnecessary, ask to be discharged from further consideration of the bill

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE

Volume 100, Part 1, 1970

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CONTENTS

The Journal of the Royal Anthropological Institute is a quarterly publication of the Royal Anthropological Institute, London. It is devoted to the publication of original research papers, reviews, and other material of interest to anthropologists. The Journal is published by the Royal Anthropological Institute, 21, Bedford Square, London, W.C.1.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

R E P O R T:

The Committee on Claims, to whom was referred the petition of Matthew Wright, asking relief for destruction of property by the Sioux Indians in 1862 and by soldiers in 1865-'66, after due consideration submit the following report :

Petitioner claims about \$5,000 as balance owing him for houses, barns, stables, and personal property burned and destroyed by the Sioux Indians in August, 1862, in the memorable massacre by those Indians that year in the State of Minnesota.

He also claims over \$4,000 for his mill, &c., destroyed by the soldiers of the United States in 1865-'66.

First.—As to the Indian depredations.

It appears by petitioner's own showing that he presented this claim to the commissioners appointed under the act of February 16, 1863, "for the relief of persons for damages sustained" by these depredations, and was awarded \$1,350, which he received. This award must be taken as conclusive upon petitioner's claim, unless he shows some good reason for avoiding it. None such is presented. It is true that he attempts to show that the testimony on that hearing was taken by but *one* of the commissioners, and that he was prejudiced against the claim; that he was assured by this commission that no such testimony was necessary; that his damages were much larger than the amount allowed him, &c. But when we refer to the act and see the specific provisions therein contained requiring care in the inspection of these claims; that the report had to be confirmed by the Secretary of the Interior; that the award was made by *all* the commissioners; that it was quite competent for *one* to take the evidence, (which had to be in writing;) and that there is nothing showing that the award was unfair under the evidence, nor that petitioner was deprived of a full opportunity to present his case—we say, when these things are remembered, it is most apparent that he has no just cause of complaint at this time. (See Report No. 5, in the case of John C. Darling, and No. 4, in Ant. Darling's case, at this session.)

Second.—Property destroyed by soldiers.

Without going into the case at length, it is sufficient for the present to say that there is no evidence as to the *value of the property so taken.*

At most, the Government would be liable, if for anything, for the value of certain logs used in building a small barrack and perhaps a stable. The petitioner introduces evidence tending to show the value of his mill, mill-dam, water-power, and fixtures, all of which had been abandoned for several years, (and whether because of Indian dangers or otherwise is not material,) and upon such evidence insists that he is entitled to \$4,000 and over, though there is no pretense that the soldiers did more than to remove some of the logs, the worth or value of which is not shown.

In our opinion, the claim is not sustained, and the committee ask to be discharged from the further consideration of the petition.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

R E P O R T :

[To accompany bill S. 131.]

The Committee on Claims, to whom were referred the bill (S. 131) for the relief of John P. Kelsey, and the accompanying papers, have had the same under consideration, and beg leave to report :

That the claimant insists that he ought to be paid the sum of \$3,626.97, moneys expended by him in and about the seizure of 132 bales of cotton, on or about the 14th day of June, A. D. 1865, at or near Ringgold Barracks in the State of Texas, in pursuance of a military order, of which this is a copy :

Special Field Orders, No. 5.

HEADQUARTERS, U. S. FORCES.

BROWNSVILLE, TEXAS, June 7, 1865.

EXTRACT.

101. Mr. John P. Kelsey, a citizen of Rio Grande City, is hereby authorized to raise and arm a company or battalion of citizens for the protection of the interest of the Government of the United States, and the property and persons of the people of Texas. The said John P. Kelsey is also ordered to seize all property of the United States, or of the late so-called Confederate States of America, and hold the same, subject to the orders of the commanding general of the U. S. A., on the Rio Grande River, or until such time as he may be relieved by the proper authorities of the United States.

By command of Brig.-Gen'l E. B. Brown.

J. B. ROCH,

Lieut. and A. A. A. Gen'l.

It does not appear that the cotton seized by the claimant was the property of the United States or of the Confederate States, or that it was the property of the State of Texas, as the claimant alleges, nor does it appear that the seizure was in any sense lawful ; it does appear, however, that the United States realized nothing for the cotton, and that it passed into the hands of one W. C. Dum, who claimed the cotton as his own. The bill of lading shows that the cotton was shipped in the name of the claimant to Messrs. Burns and Schoeff, New Orleans, but nothing appears to show that it was so shipped for the United States. The draft drawn by General Brown in favor of the claimant was drawn against the cotton so seized and to be paid out of the proceeds of the same.

All the papers filed purport to be copies, and there is no sworn testimony ; but taking the facts which appear to be true, the committee are of opinion that the claimant is not entitled to be paid anything as claimed in this behalf, and hence report back the said bill and recommend that the same be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1874.—Ordered to be printed.

Mr. DAVIS submitted the following

R E P O R T :

[To accompany bill S. 395.]

The Committee on Claims, to whom were referred the petition and accompanying papers for the relief of Dr. Edward H. Calvert, of the District of Columbia, report :

The petitioner shows that, in the year 1862, and for some time previous thereto, he was the owner of $11\frac{3}{4}$ acres of land situated on Good Hope Hill, in the District of Columbia, on which there was a good dwelling-house, stable, and carriage-house, a large green-house, and an orchard of about two hundred select and thrifty trees ; and that said tract was inclosed by a substantial plank-fence. He further shows that in said year the military authorities of the United States took possession of said property, and built thereon the fortification known as Fort Wagner, and, in the process of constructing said fortification, destroyed all the above-mentioned improvements, except the dwelling-house ; that also in said construction the earth was thrown up, and the surface of the land disturbed ; that said fort was occupied by the Federal authorities until the close of the late war ; that petitioner was loyal to the United States Government during the late war ; and that he has never received any compensation for the injury done to his property. The petitioner claims damages and asks compensation to the amount of \$7,000. The loyalty of the petitioner is proved by the affidavits of R. H. Williams and Dr. William B. Butt, of the city of Washington, D. C., who claim to have known him intimately during the period of the war. Some four parties, to wit, Joseph I. Jenkins, Harriet Richardson, J. N. Osborne, and George Calvert, make affidavit as to the occupation of the property, and the damages caused thereby, and, in the main, verify the statement of petitioner, but vary very widely as to the amount of damages, stating them from \$2,500 to \$7,000, the amount claimed. The records of the Departments show that no compensation has been paid to the petitioner for the occupation and damages aforesaid.

This petition was presented to the Senate and referred to this committee at the second session of the Forty-second Congress. A bill was then reported recommending the payment of \$1,500, which passed the Senate June 3, 1872, was reported to the House of Representatives, and there referred to a committee, in whose hands it remained.

The committee think the claim of petitioner, as well as the estimates of his witnesses, much too high, and therefore recommend the payment of \$1,500 in full compensation for rent and damages, and report a bill in accordance therewith, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 307.]

The Committee on Pensions, to whom was referred the bill (S. 307) granting a pension to Henry Oglesby, submit the following report:

Upon reference of this case to the Commissioner of Pensions, with a request that he forward the papers in the case to the committee, he says:

"Claim for disease of eyes was filed August 3, 1867, and rejected under departmental construction of limitation of section 6 act of July 4, 1864, February 28, 1873. It is now believed to be admissible under section 24, act of March 3, 1873, and will receive further consideration, if your committee deem proper to return the case for that purpose."

Under these circumstances the committee are of opinion that the papers should be returned to the Pension-Office, and the claimant find his relief there rather than here. If his claim is finally rejected, he can then renew his application to Congress.

The committee therefore recommend the indefinite postponement of the bill.

IN THE MATTER OF THE ESTATE OF

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THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

The undersigned, being a duly qualified and sworn executor of the last will and testament of the deceased, do hereby certify that the following is a true and correct copy of the same as the same appears from the records of the probate court of the county of [] State of []

Witness my hand and seal of office this [] day of [] 1890.

Attest: My hand and seal of office this [] day of [] 1890.

Attest: My hand and seal of office this [] day of [] 1890.

Attest: My hand and seal of office this [] day of [] 1890.

Attest: My hand and seal of office this [] day of [] 1890.

Attest: My hand and seal of office this [] day of [] 1890.

Attest: My hand and seal of office this [] day of [] 1890.

Attest: My hand and seal of office this [] day of [] 1890.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 217.]

The Committee on Pensions, to whom was referred the bill (S. 217) granting a pension to Julia A. Smith, submit the following report :

This case was pending for some time in the Pension Bureau. At first it seems there was no evidence on file in the War Department that C. B. Smith (the husband of Mrs. Smith) was mustered in as first lieutenant and quartermaster, Fifth Iowa Cavalry. This evidence was supplied, and on the twenty-third of September, 1872, the Adjutant-General informed the Commissioner of Pensions that upon evidence submitted an office muster had been made, mustering Smith into service as lieutenant as above, and that his resignation was accepted to take effect from April 25, 1864, by special field order No. 116 from Headquarters Department of the Cumberland of that date. He further certified that there was no evidence of disability on the rolls. He entered the service in September, 1861, was mustered, in the rank of lieutenant, January 1, 1862, and died on the 25th of April, 1871.

In the declaration made by the widow for a pension, she alleges that her husband became disabled by rheumatism while in the service and in line of duty, and that this disease continued and caused his death. It will be observed that his death occurred just seven years after his resignation was accepted. The Commissioner, in a letter to the committee, says :

“The parol evidence shows that the alleged death-cause originated during service, but its origin in line of duty is not proven, nor is there any record that the officer was at any time during his service suffering from alleged disability or received treatment therefor. He was mustered out without any evidence of disability. The medical evidence fails to show that rheumatism or any sequence from it continued to exist up to the time of the officer's death, and that it was the immediate cause thereof.”

It becomes necessary, in considering this case, to review the evidence submitted to the Pension-Office. It is clear enough that unusual pains were taken to decide the case correctly. It appearing that one Dr. B. Y. Shelby was the assistant surgeon of the regiment, whose testimony would be of valuable aid, the Commissioner sought his opinion by letters addressed to him at two or three different places. But no response was obtained, and the presumption is he was dead at the time.

Perhaps too much stress should not be laid on the fact of the absence of record evidence of disability in the War Department, as there was no record there of the officer's military history until supplied *aliunde*. On the other hand all the testimony shows that Lieutenant Smith was an able bodied and healthy man when he entered the service, and that he was broken down in constitution and health upon his return home

after his resignation. Professional and unprofessional witnesses unite in the declaration that his disability occurred while in the service, though what that disability was is stated in different ways by the witnesses.

Thus, the lieutenant-colonel of the regiment says: "I knew Lieutenant Smith as serving as first lieutenant, from 1861 to April 25, 1864. Knew the said Smith before he entered the service, and that he was an able bodied, healthy man; that he contracted chronic disease then or about that time and suffered therefrom until the time of his death; that said Smith was treated therefor by B. Y. Shelby, assistant surgeon, Fifth Iowa Volunteer Cavalry; that said Smith's habits were not such as to induce or aggravate said disease prior to, during, nor subsequent to the service of said Smith in the Army."

Dr. McClelland, who served four years in the war, and whose high character is indorsed by Senator Tipton, who certifies he served four years in the same regiment with the doctor, and who appears to have served as a surgeon and assistant surgeon in the Army from 1861 to 1866, says that while Smith was a great sufferer from rheumatism, he never attributed his death to the direct action of that disease, but that it existed in his system to such an extent as greatly to complicate his disease. He adds that his general system may have been so impoverished by the action of rheumatism as to result in passive congestion, of which apoplexy is the direct sequence, and in conclusion says: "There is no doubt in my own mind that Colonel Smith's death was the result of disease contracted in the Army."

In an affidavit made a short time previously, Dr. McClelland swears positively that chronic diarrhea was the disease of which the officer died, and that he had knowledge of its existence from the period of Lieutenant Smith's resignation until his death.

Enos Lowe was a surgeon of this regiment in the early part of the war, and swears that Smith began to suffer under alternations of rheumatism and diarrhea while in the service, and at the conclusion of the war came home broken down in health and constitution and died in Washington City while here settling his accounts.

Two other physicians testify to the officer's general good health at the time he entered the service, and to the fact that during his term of service in the Army he contracted disease from exposure, which continued to the time of his death. Both make mention of chronic rheumatism as the specific disease which he contracted.

We do not think it essential to decide whether his death was the immediate result of rheumatism or of chronic diarrhea or any other particular form of disease. The points of inquiry are: Was the soldier a sound, healthy man when he entered the service; did he, while in the service, contract any disease or become in any form disabled in consequence of his service and while in the line of duty, and was his death the result?

Now, two of these points admit of no question. He was a well man in December, 1861; he was broken down in constitution and health on the 25th of April, 1864. All of the doctors, and some who are not, agree in ascribing his death to his exposures while in the Army. It should make no difference what was the immediate cause of his death, if its ultimate and contributing cause was exposure, fatigue, or overwork while doing duty.

In view of all the evidence, but laying special stress upon that of the lieutenant-colonel of the regiment, Drs. McClelland and Lowe, the committee think this a proper case to allow the widow a pension, and accordingly recommend the passage of the bill without amendment.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1874.—Ordered to be printed.

Mr. BOREMAN submitted the following

REPORT:

[To accompany bill S. 398.]

The Committee on Claims, to whom was referred the petition of Hiram W. Love, praying reparation for damages sustained by him in the destruction of his cotton-crop by the United States Army during the war for the suppression of the rebellion, respectfully submit the following report:

It appears that the papers in this case were presented in the Senate at the first session of the Forty-first Congress, and were then referred to this committee, and, on the 9th of April, 1870, the committee made a written report thereon; which is as follows:

On the 8th day of March, 1864, the petitioner made the following agreement with William P. Mellen, supervising special agent of the Treasury Department, to wit:

“LEASE.

“This agreement, made this 8th day of March, 1864, by and between the United States of America, by William P. Mellen, supervising special agent of the Treasury Department, in the first agency, and Hiram W. Love, of Iowa City, Johnson County, in the State of Iowa, witnesseth that, in pursuance of instructions from the Secretary of the Treasury of the United States, and of orders of the Secretary of War, concerning the leasing of abandoned houses, tenements, and lands in States declared in insurrection, the said agent, for and in behalf of the United States, agrees, upon the terms hereinafter contained, to lease to the said Hiram W. Love, from the date hereof to the first day of January, 1865, the following-described lands and premises, viz: lying and being in the county of Desha, and State of Arkansas, all the tillable land contained in a tract bounded by a line drawn from the naval station at the mouth of White River to the Arkansas River cut-off; thence to the mouth of the cut-off at White River; thence down White River to the Mississippi; thence down the Mississippi River to the naval station. Said tract is more particularly known as the Old Field at the Cumby Monument, and said to contain fifty acres of land, more or less.

“The said Hiram W. Love, having taken and filed the prescribed oath hereunto annexed, hereby agrees to pay to the said agent, as rent for the above-described lands and premises, one cent per pound on all cotton, and a proportionate sum upon all other products raised by him; which payment shall be made as provided for and in pursuance of the rules and regulations for leasing abandoned plantations and employing freedmen, hereunto annexed; and in all cases where freed labor is employed, the said Hiram W. Love further agrees to contribute or pay to the said agent the sum of one cent per pound on all cotton, and a proportionate sum upon all other products grown on said premises, for the purposes set forth in Section V of said rules and regulations.

“And the said Hiram W. Love further agrees that during the continuance of this lease he will keep employed one No. 1 man, or the equivalent thereto in men, women, or children, as classified in said rules, for each twelve acres of tillable land occupied by him under this lease, it being hereby agreed that said premises contain fifty acres, and require four No. 1 hands, or their equivalent in other grades.

“And the said lessee further agrees to furnish to the persons employed suitable

tenements, with separate quarters for families who may desire the same; and that to each family of four or more persons he will set apart, for their sole use and benefit, not less than one acre of ground suitable for garden-purposes, and fuel sufficient for the use and comfort of each family, all of which shall be without charge to such persons or the Government.

"Said lessee hereby further agrees that no freed person shall be employed on the said premises except under contract made with such person; and no contract for freed labor shall be valid without the sanction of the superintendent of the Freedman's Home Farm, who shall in each case designate the proportion of each grade or sex to be employed.

"Said lessee further agrees to pay to each freed person so employed, according to the terms set out and established in Section X of the said rules and regulations.

"Said lessee further agrees to pay at least one-half the amount of the monthly wages during each and every month, said payment to be in cash, food, clothing, or other necessities, at the option of the laborer; all food, clothing, or other articles so furnished to be of good quality, and not to be charged at more than ten per cent. advance on wholesale invoice prices at Saint Louis, Chicago, Cincinnati, or Louisville.

"It is further agreed that the parties to this contract shall be subject to the observance of the rules and regulations hereto subjoined.

[SEAL.]

[SEAL.]

"H. W. LOVE,

"WILLIAM P. MELLEN,

"Per T. C. CALLICOTT,

"Assistant Special Agent Treasury Department."

By virtue of said agreement the petitioner entered upon said lands in the month of April, 1864, which, upon actual survey, were found to contain 88.28 acres; and also upon a smaller lot, containing from six to ten acres, situate about one-fourth of a mile from said larger tract. It appears that said petitioner did plant cotton in both of said parcels of land, and by his proper care and attention the cotton thereon promised a good and productive crop, and that said crop had so far matured as to be ready for picking, and the petitioner had made his arrangements for picking the same, when, on the 8th day of September, 1864, Brigadier-General Dennis, commanding some fifteen thousand United States troops, arrived with said forces at the mouth of White River, and, after examining the vicinity to select a proper place of encampment for said forces, issued the following order:

"[Special Orders No. 19.]

"HEADQUARTERS UNITED STATES FORCES,

"Mouth of White River, Arkansas, September 8, 1864.

"III. There being no ground in this vicinity suitable for an encampment, excepting this field of growing cotton, claimed as private property by Maj. Hiram W. Love, the troops of this command will at once disembark and go into camp on this aforesaid field, the same being necessary for military purposes.

"By order of Brig. Gen. E. S. Dennis:

"WM. E. KUHN,

"Acting Assistant Adjutant-General.

"I certify on honor that the foregoing is a true and correct copy of the original order, as appears upon records on file in this office.

"WM. E. KUHN,

"Acting Assistant Adjutant-General."

By virtue of said order the said forces were disembarked and encamped on the said larger field of cotton, notwithstanding the remonstrances of the petitioner through his authorized agents.

The result was that the cotton on the said field of eighty-eight acres was principally destroyed. One of the witnesses, substantially sustained by many others, testifies that, "immediately upon occupying said land, the troops went to work and pulled up the cotton-plants to clear the ground for camping purposes, and scattered it around in piles so as to be out of their way, and trampled upon and beat it down with wagons, horses, and artillery; that in a short time the whole crop of cotton growing on said parcel of land, containing about ninety acres, was wholly destroyed and rendered worthless and of no value, and was wholly lost to said Love, except in this, a small amount of cotton was picked from the scattering stocks and from the piles of stocks pulled up by the troops; but the amount thus obtained was very small and of little value; that, in truth and in fact, the entire crop of cotton growing on said parcel of land, containing about ninety acres, was substantially wholly and entirely destroyed, and rendered worthless and of no value; and that the said Love, by reason of the occupancy of said parcel of land by said troops of the United States, as above stated, was injured and damaged to the full value of the cotton-crop growing thereon in its then condition."

The actual amount secured as "picked from the scattering stocks and from the piles pulled up by the troops" was 3,896 pounds.

The claimant has filed the affidavits of many witnesses, of evident intelligence and good moral character, in relation to the amount of cotton which the said eighty-eight acres would have produced if he had been suffered to pick and bale it; several of whom were persons who had experience and skill in raising cotton.

Their estimates are as follows:

Eli Nellums, one and three-fourths bales of ginned cotton, of five hundred pounds to the bale, per acre.

Jacob Graham, the same.

George W. Moorehead, an aggregate of two hundred bales of five hundred pounds each.

John A. Hugus, one and one-half to two bales per acre of five hundred pounds.

Marion W. Magill, the same.

Thomas E. Dugan, from one and three-fourths to two bales of five hundred pounds to the acre.

The value of cotton at that time, according to the proof, was \$1.75 per pound, delivered on the bank of the river.

The highest estimate of cost for ginning and baling is \$3 per bale; and at the price of \$1.75 per pound, there would have been a profit on the bagging and rope necessary to bale the cotton.

Thus stands the case on the proof before the committee. Estimating the crop of cotton on the said eighty-eight acres at one and three-fourths bales per acre, the aggregate to be one hundred and fifty-four bales of five hundred pounds each, making seventy-seven thousand pounds of cotton, which, valued at \$1.75 per pound, would make the sum of.....

		\$134,750
Deducting 3,896 pounds saved.....	\$6,118	
And the ginning and baling.....	462	
		6,580

Would leave a balance of		128,170
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Such is the result of the evidence in this case, looking to the value of claimant's cotton crop, if he had been allowed to pick, gin, and sell it. It is palpable that this result, based wholly on *ex-parte* affidavits, is unreliable and extravagant. But a majority of the committee are of opinion that no relief should be granted to the claimant on this basis; that Congress should not undertake to ascertain, and pay for, the speculative advantages which he might have derived from his contract if he had not been interrupted in its execution; but that he should be indemnified for his actual expenses in preparing the ground and planting and cultivating the cotton, including a reasonable compensation for his own time and labor bestowed thereon.

Waiving the question of the Government's liability for the net profits which the claimant would have realized if he had been permitted to pick, gin, and sell his cotton, the committee all agree that he should be indemnified for his actual expenses. The evidence shows that the claimant in good faith, under authority of law, rented the land aforesaid from the supervising agent of the Treasury, and planted the same with cotton, and cultivated it, according to the stipulations of the contract, until he was forcibly ejected from the premises by the military order aforesaid, and his crop destroyed by the troops of the United States encamped thereon by regular competent military authority. Certainly, the claimant should be indemnified to the extent of his actual expenses incurred in the faithful execution of a contract with the Government which the Government, by its own officers, forcibly prevented him from fully executing, and from which, if he had been permitted fully to enjoy the benefits of it, he would, beyond all question, have realized a large amount of net profits over and above his expenditures.

But the claimant, proceeding upon the hypothesis that the measure of the Government's liability was the net profits which he would have made if he had not been ejected from the premises, and his crop destroyed as aforesaid, has furnished no evidence of his actual expenses in planting and cultivating his crop, upon which the committee could make any reliable estimate thereof.

The committee, therefore, report back the papers to the Senate, and recommend that the claimant have leave to withdraw them, and to take evidence of said expenses, if he sees proper to do so, with a view to a future application for relief in that behalf.

Your committee further state that they concur in the foregoing statement of the history and facts of claimant's case except that they think that the estimate therein of the amount of cotton that would have been gathered from the 88 acres of land is extravagant, and the price per pound therein fixed more than it would have sold for.

Your committee further state that, since the making of the foregoing

report of April 9, 1870, the claimant has filed an account of his actual expenditures in this behalf, accompanied by his own affidavit and some additional evidence. In his said affidavit he says:

“That deponent’s books, containing an account of the moneys expended by him in raising a crop of cotton in the year 1864, on certain lands leased by him from the Government of the United States, situated at the mouth of White River, in the State of Arkansas, (which crop of cotton was destroyed by the military forces of the United States in September, 1864, by camping thereon,) were destroyed by fire on a steamboat on the Mississippi River in the year 1865, so that he cannot make out a full and complete account of all moneys expended by him in the planting and cultivation of said crop of cotton, but that the following statement, made up from memoranda and receipts now in his possession and from memory, is as full and accurate an account of such expenditures and expenses in raising the said crop of cotton as he is now able to give; and that the same is true and correct according to the best of his knowledge and belief.”

In the account accompanying said affidavit is set forth in detail the several items of expense incurred by claimant in clearing off the land; in providing materials and implements; in paying for labor; and generally in planting, cultivating, and raising the crop of cotton which was destroyed as above set forth. The items of expense charged in said account amount in the aggregate to the sum of \$24,341.75. This transaction, it will be recollected, was in the year 1864, when three dollars, in the currency of the times, (United States notes,) were worth little more than one dollar in gold. These charges are, no doubt, made with reference to the paper-currency of the time. Yet, notwithstanding the depreciated condition of the currency at that date, your committee look upon them as exorbitant; and while admitting that it is clearly shown from the amount of work done, materials furnished, &c., that claimant must have expended considerable sums of money in preparing for, and cultivating, his crop of cotton, the committee, nevertheless, think that a much less sum than that claimed will cover his actual expenses; and in this view they have made an estimate, imperfect it may be, of such actual expenses in this behalf, and have determined to recommend, and do recommend, that he be allowed the sum of \$5,000 in full of all claim and demand against the United States on account of the matters set forth and complained of in complainant’s petition; and to this end the committee report the accompanying bill, and recommend that the same do pass.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 42.]

The Committee on Pensions, to whom was referred the bill (S. 42) granting a pension to Caleb A. Lamb, late a private in Company E of the Forty-sixth Regiment Indiana Volunteer Infantry, submit the following report:

The evidence shows that Mr. Lamb was admitted to the pension-roll by the Commissioner of Pensions at the rate of \$4 per month. He applied for an increase, but, by order of the Commissioner, the increase was denied and his pension was suspended.

The evidence shows that he was a healthy man when he entered the service, and is now suffering from an obstructive lesion of the mitral valve of the heart, caused by a severe attack of congestive fever at Camp Wickliff, in the State of Kentucky, about the middle of January, 1862, while he was in the service of the United States and in the line of duty, and that he is unable to perform ordinary manual labor, or, by labor, earn a livelihood for himself and family. He was discharged from the service on account of "irritable heart," induced by the sickness above mentioned and severe campaign service. These facts are sufficiently established by those who were with him in the service, members of the same regiment, and by the affidavits of several respectable physicians who have examined his case. The writer of this report is personally acquainted with the physicians who testify, and there is no reason to doubt either their competency or integrity.

The Committee therefore recommend the passage of the bill without amendment.

THE UNIVERSITY OF CHICAGO

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The University of Chicago is a private research university in Chicago, Illinois. It was founded in 1837 as the first American university to be organized on the European model, and is one of the leading universities in the United States. The university is known for its commitment to academic excellence and its diverse student body. It has a long history of producing world-class scholars and leaders in various fields of study. The university's research output is highly influential, and it has a strong reputation for its contributions to knowledge and society. The University of Chicago is a member of the Association of American Universities and is ranked among the top universities in the world.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 387.]

The Committee on Pensions, to whom was referred the bill (S. 387) granting a pension to Captain Benjamin Farley, submit the following report :

This officer was captain of Company C, in the Fifth Cavalry, Ninetieth Regiment of Indiana Volunteers. He entered the service on the 16th day of August, 1862, and was discharged on surgeon's certificate of disability, and on his own resignation, on the 3d day of May, 1863. On the 9th of August, 1865, he made claim for an invalid pension, and, in his declaration, stated "that, while in the service aforesaid, and in the line of his duty, on or about the last of February, 1863, he contracted a disease of the eyes, which renders him almost totally blind, and unfit for any occupation in life, and that said disease of the eyes was contracted at Mumfordsville, in the State of Kentucky."

The only trouble in obtaining a pension at the Pension-Office grew out of the nature of the certificate of disability of the surgeon of the regiment, which was made on the 21st of April, 1863. In that he certifies that the officer's disability arose from a compound comminuted fracture of the left leg, of twenty years' standing, followed by almost an entire loss of the small bone (fibula) and a partial loss of the large bone, (tibia,) rendering the leg very feeble, and causing him, when much exposed, great suffering. He also certified that Farley was nearly fifty-one years of age, which greatly militated against his usefulness in active service.

This same surgeon (A. C. Fosdick) subsequently made an affidavit to the effect that, at the time of Captain Farley's discharge, his eyes were inflamed and permanently diseased, rendering him wholly unfit for military duty, and that he was then (23d of February, 1867) nearly blind, with no prospect of recovery, and that this blindness was brought on by exposure in the State of Kentucky, on active outpost duty; and, further, that, while he was discharged for fracture of the leg, old age, and general debility, his chief disability was sore eyes. Although this and other evidence was furnished the War Department for the purpose of correcting the record of Farley's disability, it was not deemed satisfactory, and the record remains as originally made.

In his application for a pension Captain Farley repudiated the fracture of his leg as the real cause of his disability and resignation from the service, and insisted that the disability arose from the exposures he had been subject to in doing scout-duty, resulting in permanent loss of his

eyesight. In an affidavit on file he accounts for the surgeon's certificate of disability as follows: He says that when he made application for discharge he was affected with rheumatic pains and an affection of the liver, but that Dr. Fosdick informed him that a military order had been issued forbidding further discharges of soldiers on account of rheumatism; that in the conversation with Fosdick he incidentally mentioned that his rheumatism affected the leg which had formerly been fractured more than it did the other, and that when Dr. Fosdick had examined the fractured leg he said, "I can fix it." The witness believes that the certificate of the surgeon was made to avoid the military order referred to, as he says this old fracture did not prevent him from performing active military duty, and he does not feel that he should be bound by what the surgeon certified and omitted to certify, especially in the light of the surgeon's subsequent affidavit; and the claimant proceeds to say, under oath, that when he entered the service he was in the enjoyment of good bodily health and strength; that the fracture of his limb did not affect his activity in the least, either before entering the service or while in it, nor has it since; that he contracted a very severe cold while on a scout between Mumfordsville and the Cumberland River, together with rheumatism and affection of the liver, and sore eyes followed the cold, and when he applied for a discharge he was suffering from general prostration and nervous affection, and very much desired to get out of the service, believing that his general health was too much impaired to make him fit for further service.

We have looked on the testimony very carefully—that on the original submission of the case and that presented when the case was re-opened; and we consider the proofs establish the following points very satisfactorily:

1st. That Captain Farley was a sound and active man when he enlisted in the service at the age of fifty, and demeaned himself as a good soldier, and that he then had no affection of the eyes.

2d. That after the severe cold he took performing scout duty in ranging with his company over the country between Mumfordsville, Ky., and the Cumberland River in Tennessee, at a very inclement season of the year, his eyes became affected, and have continued to grow steadily worse until he is now totally blind.

3d. That though the surgeon omitted to make mention of the diseased condition of his eyes when certifying to his disability, that condition nevertheless existed.

Thus, upon the main question, Dr. James testifies as the result of a professional examination of Captain Farley, made soon after his return from the Army, that his head pained him severely at times, and during afternoons and nights he seemed to suffer severely with pain around the orbits of his eyes, the conjunctivita very much inflamed, granular and injected, the pupils almost entirely closed, cornea covered with an opaque film, sclerotic highly inflamed, retina very sensitive to light; patient could not see to define an object; in fact, says the learned doctor, "Rheumatic ophthalmia induced from the vicissitudes of camp-life, which proved incurable and produced total blindness."

These are the symptoms as described by Dr. James.

A private of the company, Isaac Sipe, in describing the scout-service, says, "We were exposed to rains, snows, and extremely cold and stormy weather for as many as three successive days," and he goes on to say "that before said Captain Farley's discharge his eyes became affected, and at the time of his discharge were very sore and much inflamed."

To the same effect is the affidavit of John Prescott, a sergeant in the

company, and Martin V. Sipe, a private, both of whom accompanied Captain Farley on this service.

Isaac P. Gray was colonel commanding the Fourth Regiment of Indiana Cavalry Volunteers, and swears that in the month of October, 1862, and up to the 11th of February, 1863, Captain Farley with his company was under his command, while scouting in the State of Kentucky; that he was then active, vigilant, and prompt in performing the duties assigned him until he was attacked with a severe cold, and afterward with rheumatism, caused by the extremely inclement weather to which Captain Farley and the entire scouting-party were exposed while scouting the country between Mumfordsville and the Cumberland River, in Tennessee; that at the time of said exposure this scouting-party was without tents or blankets. During all this time he swears he never heard Captain Farley complain of a fractured or defective leg, and, in his opinion, his usefulness and activity were not impaired thereby.

Seymour L. Pierce was orderly sergeant of this company, and his testimony is explicit, that before Captain Farley's discharge "his eyes were of some trouble to him, being weak and inclined to be sore before his leaving the service." This witness saw him at home in 1864, when he was almost blind; has seen him since, when he was wholly so.

As far back as December, 1860, General Shanks, the Representative of the congressional district where Captain Farley lives, certified that he was blind. So do the board of surgeons at Indianapolis.

The committee do not think it necessary to go further into detail with the voluminous testimony. Captain Farley's claim was rejected, first, because it was not clear to the Pension-Office that his blindness was the result of his service in the Army; and next, because it was not prosecuted to a successful issue within five years from the date of filing, there being no record at the War Department of the disease on account of which the claim was made. We have come to the conclusion that the claimant's blindness is the result of exposure and hard service while he was in the line of duty, and that he should receive a pension from this date at the rate established by law for loss of both eyes, and accordingly report back the bill for his relief with an amendment, and recommend its passage as thus amended.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Ruth Ellen Greeland, widow of John H. Greeland, late a captain in the Fourth Artillery, United States Army, submit the following report:

There is nothing before the committee except the petition, which is not sworn to. By corresponding with the Pension Bureau, it appears that Captain Greeland was stationed at Fort Delancy, Florida, where he was attacked with bilious-remittent fever of a congestive form. The troops in Florida were at that time actively engaged in hostilities with the Seminole Indians. There being no medical officer at the post, he did not receive medical treatment until the eighth day of his disease; that as soon as his case was reported, he was visited by a medical officer, and soon after removed to Fort Myers, where he died, on the 17th of August, 1857, being the twelfth day of his sickness.

No application has been made to the Pension-Office, for relief, by the widow, for the reason, we suppose, that the general laws make no provision for the widow or children of an officer of the United States Army who died of a disease contracted while in the service since the close of the Mexican war, and up to the time of the war of the rebellion.

If it be proper to legislate for cases like that of the petitioner, it should obviously be done by a general law. There must be many like it. This of itself would be a sufficient reason for denying the petition. But, independently of that, there is no proof accompanying the case except a reference to the action of the Senate Committee in the Thirty-fifth Congress. Whether the petitioner is still the widow of the deceased officer; whether he contracted his disease in the line of duty; whether she was loyal to the Government during the rebellion, are all of them points upon which we have no light.

The Committee, therefore, ask to be discharged from the further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1874.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Mrs. Sarah Brooks, of Cloud County, Kansas, report :

The petitioner states that on the 13th of August, 1868, a company of six Indians, claiming to be Pawnees, came to her house, captured her mother, two little sisters, one little brother, and herself; that all but herself were driven away and she taken prisoner; that her father, who was out haying, was killed by a part of the same band; that she was compelled by force to submit to the outrages of the band capturing her, sustaining injuries which still remain; that she arrived at the camp of the tribe on the 18th of August, where she was compelled to do all sorts of heavy drudgery, which frequently broke down her strength; that she attempted to escape, but was recaptured and again compelled to submit to their indignities; that she was held in captivity until March 18, 1869, when she was released by General Custer, who captured three chiefs and held them as hostages until her release; that by reason of her imprisonment and torture she is very much afflicted. She therefore prays Congress for relief.

The statement is unsupported by any proof, not even the affidavit of the petitioner being furnished. The committee report adversely, and ask to be discharged from further consideration of the case.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

R E P O R T :

[[To accompany bill H. R. 1225.]

The Committee on Pensions, to whom was referred the bill (H. R. 1225) granting a pension to William E. Price, of the State of Iowa, have had the same under consideration, and report as follows :

The report of the Committee on Invalid Pensions of the House of Representatives accompanying the bill correctly states the case, and barring the weight given to the fact that the examining surgeon passed the recruit, your committee concur in the opinion that the rebutting testimony is sufficient to remove the bar interposed by the official record to the allowance of the claim. The passage of the bill is therefore recommended, with an amendment, to take effect from its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 1229.]

The Committee on Pensions, to whom was referred the petition of Elizabeth R. McCracken, praying for the passage of a special act granting her a pension, have considered the same and report as follows:

The late husband of petitioner, Dr. Robert McCracken, was a contract-surgeon in the United States Army for about two years, from 18th March, 1868, to April 18, 1870, and died in the city of New Orleans on 10th August, 1871.

It is alleged by petitioner, and is in proof, that while in the service Dr. McCracken became afflicted with a tumor or swelling on the right thigh, five or six inches above the knee-joint, which tumor, as certified by Surgeon L. A. Edwards, United States Army, appeared after a blow received by Dr. McCracken on the part while traveling on a boat on the Mississippi River while under orders, and that while at Fort Pike, in the line of duty, the doctor was struck on the tumor with the heel of a shoe by one of the camp-women, while he was extracting a tooth for her, from which time the tumor became an open ulcer, and was finally excised, at New Orleans, in the fall or winter of 1869-'70. Dr. McCracken made application, in 1871, to be placed on the roll of invalid pensioners, but died before any action had been had by the commissioner. The petitioner also applied for a pension after the death of her husband, but her claim was rejected under the provisions of section 2 of the act of March 3, 1865, and though the act of March 3, 1873, removed the bar prescribed by that act, the evidence was pronounced by the Commissioner of Pensions insufficient to warrant the allowance of the claim.

There is no evidence before the committee, except the certificate of Surgeon L. A. Edwards, United States Army, to show that the tumor was the result of injuries received by Dr. McCracken, while in the service and in the line of duty, and he evidently certified upon the statement of Dr. McCracken himself, for he was not present and never examined the part injured on the boat, so far as appears from his own statement. Nor is there a particle of evidence to show that Dr. McCracken's death resulted from the tumor. In the absence of such testimony, when it was and is so easy to procure such proof, if true, the fair presumption is that it was not the cause of his death.

The committee concur fully in the conclusions of the Commissioner of Pensions, that the evidence is insufficient to warrant the relief asked, and recommend the indefinite postponement of the subject.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Anna Hancock, praying for a pension, have considered the same, and make the following report :

It appears that petitioner has been twice married. That her first husband, Samuel M. Bolinger, late a private in Company C, First Regiment Arkansas Cavalry, enrolled and mustered into the service of the United States on the 24th July, 1862, and died at Springfield, Mo., September 20, 1862. She filed her application for pension in the office July 15, 1865, but there being no record evidence of the *cause* of the soldier's death on file in the War Department, and failing to complete the testimony as required by the act of July 4, 1864, the claim was rejected by the Commissioner of Pensions.

Pending the application, petitioner married Robert W. Hancock, on the 30th August, 1868, who has since died, she is again a widow, and without children.

There is sufficient evidence as to sound bodily health of the late Samuel M. Bolinger, at and for two or three years before his enlistment, also of his enrollment, service, and death, but the cause of death is not satisfactorily made out. The Surgeon-General states that the death records of that office furnish no information in the case, nor the records of Springfield, Mo. No regimental records are on file from that hospital for July, August, and September, 1862.

It does not appear that petitioner is aged or infirm, or in needy circumstances ; on the contrary, she is presumed, from the date of her first marriage, to be comparatively young and without children. The committee, therefore, consider that the testimony should bring her clearly within the law to entitle her to relief. In the absence of such testimony the indefinite postponement of the petition is recommended.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

R E P O R T :

[To accompany bill H. R. 1226.]

The Committee on Pensions, to whom was referred the bill (H. R. 1226) granting a pension to Francis Bernard, have had the same under consideration, and submit the following report :

The report of the Committee on Invalid Pensions of the House of Representatives accompanying the bill is as follows: The evidence presented shows that this man enlisted and was mustered into the service of the United States Army about the 2d of September, 1861, and of course was passed as a sound man. He did full duty as a soldier in Company K, Forty-ninth Regiment Ohio Volunteers, until some time in October, 1861, when, as he was packing supplies to the camp of his regiment, under an order from the commander, he fell from a foot-log into a creek and fractured his collar-bone, and, unable to help himself out of the creek, he was taken from there to the hospital. Affidavits show that he never recovered from the injuries so as to do full duty, but remained in hospital as cook until discharged, about the 16th February, 1862. His pension has been refused because the certificate of disability for discharge shows the cause to have been "rheumatism and a failing constitution from age," while "affidavits of surgeons who knew him, and of comrades who served with him, show the disability to have been caused by the injuries received."

The case is concisely and correctly stated in the foregoing report, but your committee are not prepared to give the weight to the rebutting testimony which was allowed to it by the committee of the House; and, besides, dissent from the presumption, so broadly stated, upon the mere acceptance of recruits into the service.

The claimant files his own affidavit, and those of Colonel Gibson, who commanded the regiment to which he was attached; Doctors Thrift and Coney, surgeon and assistant-surgeon of the regiment; Private Decken, of Company K, same regiment; and Dr. Kuhn, his family physician, in rebuttal of the official record relating to the grounds for his discharge.

Claimant testifies that the commander of his company, without any intention to injure him, and supposing claimant would rather be discharged than go to the general hospital, certified to facts and matters of disability that did not in fact exist, and were wholly untrue; that the certificate of disability was made without the knowledge, request, suggestion or procurement of claimant, and that his first knowledge of the fact of disability, so certified, he obtained from the office of the Adjutant-General at Washington.

The averment of claimant touching the inaccuracy of statement made by the commander of his company can hardly be taken as impairing that officer's veracity. The officer could have had no motive, it seems, to make a false certificate, while the desire must have been very strong in men of claimant's age to be relieved from the arduous duties of a three years' continuous service. Besides, when claimant ascertained the character of the official record, stating the grounds of his discharge, he seems to have made no effort to procure the testimony of his late commander who made it. That officer may now be dead, for anything the papers show, but he must have then been accessible, else claimant could not have known the motives which moved him in stating the grounds of claimant's discharge.

Colonel Gibson testifies to the general accuracy of claimant's narrative of service in the regiment; remembers claimant and his fall off the bridge, but as to the actual injury by fracture of bones at the time of his fall has no personal knowledge.

The surgeon of the regiment, Doctor Thrift, testifies that he remembers claimant, who when first seen appeared to be a healthy man for his age; was active and did duty regularly with his company until sometime in the fall of sixty, when he was assigned to duty in the hospital department of the regiment, and served there in the capacity of cook. His disability gradually increasing he was discharged. "The cause assigned in the certificate of disability for discharge is not distinctly remembered."

The assistant surgeon, John M. Covey, testifies to the fact that claimant fell off the bridge, as stated, and fractured the sternal end of the left clavicle, and was treated for the same: and that after he received said injury he remained four or five weeks doing duty as hospital cook.

Joshua H. Dickins, claimant's comrade, who was on duty with him at the time of the fall, testifies to the fact, and that claimant was in good health at the time, but remained sick and disabled thereafter by reason of the injury until he was discharged.

Doctor Kuhn testifies that he has known claimant for more than twenty years; knew him to be in good health when enlisted, and regarded his constitution as unusually strong and vigorous; saw claimant immediately after his discharge; examined the wound which he had received, and found the sternal end of the left clavicle injured, which caused ulceration and exfoliation of bone, a portion of which he removed. He further testifies that the effect of the wound has been followed by inability to use the left arm effectively, which injury may be aggravated by cold and use.

The committee have thus gone through and set out the material portions of the testimony relied upon to remove the bar which the official record interposes to the allowance of the claim; and it is submitted that there is nothing in it to impeach the accuracy of the statements made by the surgeon of the regiment in the certificate of disability for discharge, or the remarks thereon by the company commander. There is nothing in the testimony either for or against the claimant, leaving aside the issue between himself and his company commander, which may not be perfectly true. Claimant may have had rheumatism, unknown to Doctor Kuhn, before entering the service, or the service may have developed it, and no one, not even the claimant himself, pretends to question the objections to his continuance in service on the score of age and general infirmity; though the testimony was taken expressly to disprove the allegation of unfitness on that account.

The fact that claimant did duty regularly from the time of his enlist-

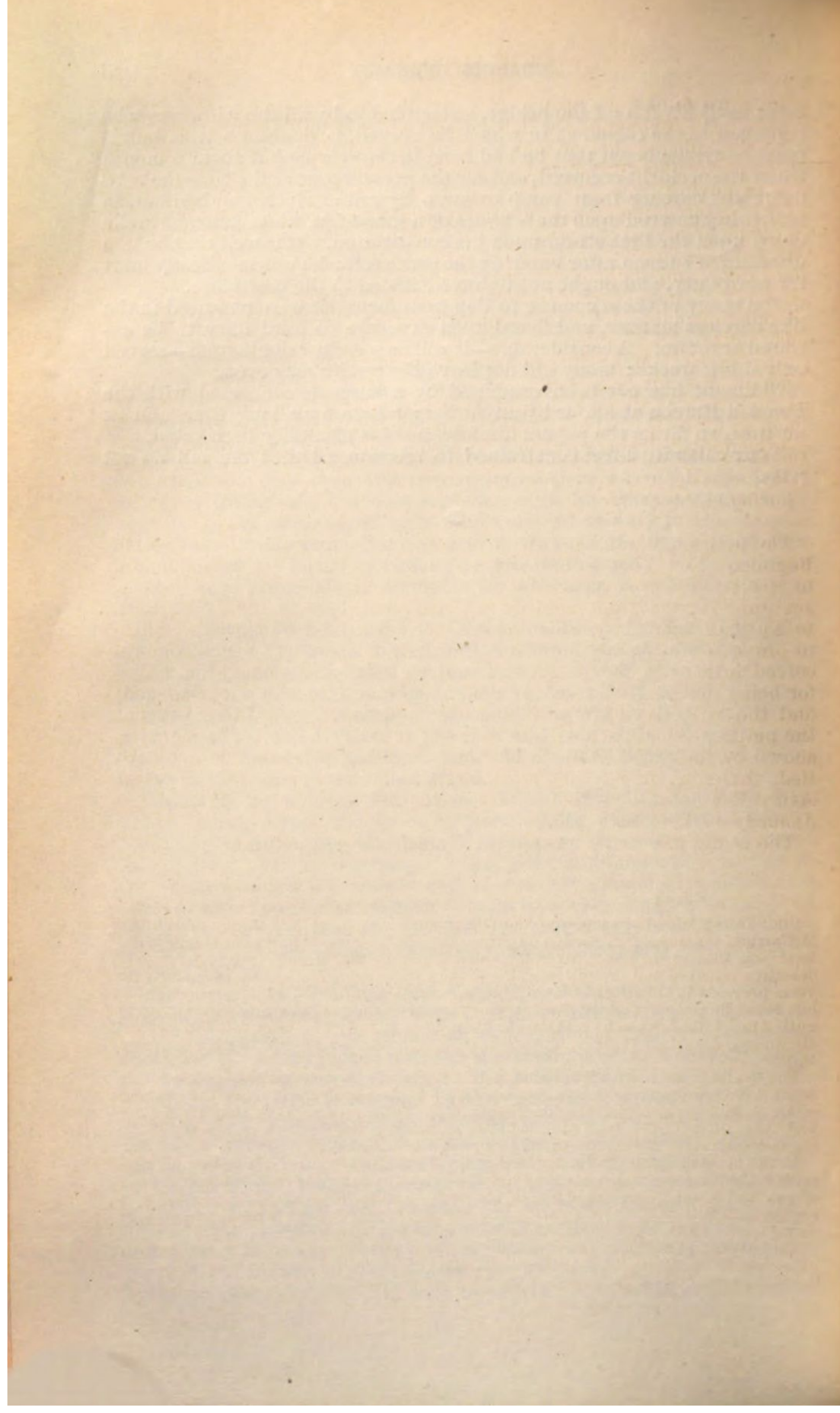
ment until his fall off the bridge, as testified to by all the witnesses who belonged to the regiment in which he served, is doubtless true, but it must be remembered that he had been in the service but about a month when the accident occurred, and for the greater part of the time the regiment was moving from camp to camp by rail or river, and had not, in fact, fairly entered upon the fatigues of a campaign, when claimant broke down upon the first strain upon his constitution. It is well that he was discharged so soon after entering the service, for he was manifestly unfit for hard duty, and ought not to have enlisted in the first place.

Too many of those coming to Congress for relief were recruited in the like careless manner, and found upon exposure to hard duty to be unsound or infirm. A considerable—it will be seen by examination—served only a few weeks; many did not leave the rendezvous even.

Claimant has not been examined by a surgeon connected with the Pension Bureau at all, or by any other surgeon for a long time, and at no time, so far as the papers disclose, has his disability been rated.

Your committee feel constrained to recommend that the bill do not pass.





IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

The Committee on Military Affairs, to whom was referred the petition of William McCarrick, praying for arrears of bounty, &c., submit the following report:

The petitioner states he was a private in Company B, Twenty-sixth Regiment New York Volunteers, and asks for special act to enable him to receive \$100 bounty, act July 22, 1861, and \$50 additional bounty, act July 28, 1866, and monthly pay and allowances from July 15, 1861, to April 18, 1863, from which he has been deprived owing to inability to prove he was treated in hospital for insanity caused by sunstroke received in service, the surgeon of said regiment who treated him therefor being dead. No papers are filed in substantiation of facts alleged, and the Secretary of War having been addressed, replies in effect that the petitioner had been subject to fits of insanity before enlistment, as shown by the proof on file in his office, and that petitioner is not entitled, therefore, to pay and allowances, under paragraph 1371, Revised Army Regulations of 1863. (See letter of Secretary of War, dated January 30, 1874, attached.)

The committee therefore report adversely on said petition.

WAR DEPARTMENT,
Washington City, January 30, 1874.

SIR: In reply to your request of the 17th instant for papers in the claim of William McCarrick, Company B, Twenty-sixth New York Volunteers, I have the honor to inform you that the evidence asked for was accepted by this Department and charge of desertion removed and records amended to show this man subject to fits of insanity for years previous to enlistment. He left his command July 15, 1861, while insane, went to his home in Oneida County, New York, where he remained laboring under insanity until April 1, 1863, when he returned to his command, and he is not entitled to pay and allowances from July 15, 1861, to April 1, 1863. He was mustered out with company, May 28, 1863.

The evidence upon which the charge of desertion was removed was presented on April 8, 1871, June 12, 1871, and August, 1871. In that evidence is found the affidavit of Dr. J. M. Sturdevant, of Oneida County, New York, setting forth that the soldier had then, June 8, 1871, been subject to fits of insanity for fifteen years, thereby showing conclusively that insanity existed long prior to enlistment.

In the evidence presented on November 4, 1871, and subsequently, it is desired to establish that insanity was contracted in the service, to enable the man to obtain arrears of pay and bounty; but in the face of the positive affidavit previously presented of a regular practicing physician showing insanity to have existed previous to enlistment, no favorable action has been taken by this Department.

This soldier, as the record now stands, is not entitled to pay or allowances under paragraph 1371, Revised Army Regulations of 1863, which is as follows: "Every enlisted man discharged as a minor or for other cause involving fraud on his part in the

enlistment, or discharged by the civil authority, shall forfeit all pay and allowance due at the time of the discharge, and shall not receive any final statements."

If the papers on which the charge of desertion was removed are still desired, copies will be prepared; but as it will take some time to make the copies, this information is furnished that you may have an early reply to your letter.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

Hon. GEORGE E. SPENCER,
United States Senate.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1874.—Ordered to be printed.

Mr. JOHNSTON submitted the following

REPORT:

[To accompany bill S. 418.]

The Committee on Revolutionary Claims, to whom was referred the memorial of Susan Dayton Anderson, administratrix de bonis non of Lieut. Joseph Wheaton, deceased, report:

That at the second session of the Forty-second Congress a report was made in this case, which, as it embodies all the facts, is now adopted by the committee, and is as follows:

42D CONGRESS, 2D SESSION. SENATE REPORT No. 105.

APRIL 3, 1872.—Ordered to be printed.

Mr. POOL made the following report: [To accompany bill S. 909.]

The Committee on Revolutionary Claims, to whom was referred the memorial of the administrator of the estate of the late Lieut. Joseph Wheaton, and the letter of the Secretary of the Interior of the 27th of March, 1872, relative to the same, report:

That the evidence before the committee shows that Lieut. Joseph Wheaton served in the Rhode Island line from the commencement to the close of the revolutionary war; that his father and ten brothers all held commissions as officers in the British service, and that he alone sacrificed his home and domestic ties for the cause of liberty; that he was disinherited by his father, Col. Caleb Wheaton, who commanded a regiment of British pioneers, who, to the day of his death, never forgave his son for what he considered a disloyalty to the King of Great Britain in joining "the Yankee rebels;" that on the 11th of May, 1775, and long before war was declared, he joined a band of volunteers, and took an active part in capturing the *Margaretta* and two other armed British schooners, which was of great service to us in after-times, and was the first advantage gained over our enemies on the waters. In this service he received a severe saber wound on the head, which troubled his mind through life, and terminated in his dying in the insane asylum, in Baltimore, in the year 1828.

After the war was declared, Joseph Wheaton joined the Rhode Island line, in Col. Israel Angell's regiment, and sharing in all the battles in which that part of the army was engaged, which seems to have been many, never left his regiment until the end of the war. He was invested with a commission as colonel in the war of 1812, through the whole of which he served with distinguished ability.

By the acts of Congress of 3d and 21st of October, 1780, the Government of the United States promised to pay to each and all the officers, individually, who should continue to serve until the end of the war, half-pay for life, and to pay the same to said officers, or their legal representatives, in specie or other current money, at the end of each and every year for life. This was a distinct offer and covenant, stipulated by the most solemn act of the Government, in 1780, after four years and upward of hard service in field and camp by Joseph Wheaton, among others, and was offered as an inducement to cause him to continue in the service until defeat or victory should mark the close of the contest. If defeated, he, with his compeers, had nothing to hope for but the rebel's fate; if victorious, he would have the stipulated compensation of the promised half-pay to buy him bread for the balance of his days. He accepted the offer,

fulfilled the contract, and served to the end of the war, thus establishing his unqualified right to said half-pay.

It was decided by the Court of Claims, in the case of Thomas H. Baird, administrator of Dr. Absalom Baird, deceased, that the acts of Congress of 3d and 21st of October, 1780, created a legal liability against the United States in favor of the officers therein referred to, which no subsequent legislation by Congress could release without the assent of the other party. Your committee find that this decision of the Court of Claims was sanctioned by Congress by an act approved August 18, 1856.

The Committee on Revolutionary Claims, in the Thirty-sixth Congress, made a favorable report in this case, and in the Thirty-seventh Congress the claim was referred by resolution of the House to the Secretary of the Interior for adjustment. In reply, the Secretary of the Interior submits the following letter:

“ DEPARTMENT OF THE INTERIOR,
“ Washington, March 27, 1862.

“ SIR: I have the honor to acknowledge the receipt of a resolution of the House of Representatives, adopted on the 14th instant, referring to this Department for adjustment the claim of Mary A. Berault, administratrix of the late Joseph Wheaton.

“ Upon an examination of the papers referred to me, I am fully satisfied of the justice of this claim, and concur in the report of the Committee on Revolutionary Claims in its favor. The services of Lieutenant Wheaton were of a highly meritorious character, and continued from a time anterior to the passage of the act of Congress of October, 1780, promising half-pay for life to those who should serve until the end of the war, until the final and successful termination of the revolutionary struggle.

“ The principle upon which the claim is based has been recognized and sustained by the Court of Claims, in the case of Dr. Baird, and the decision of that court has received the sanction of Congress.

“ I should not hesitate to adjust and allow the claim, as recommended by the resolution of the House of Representatives, if any fund were placed at my disposal from which it could be paid; but no appropriation has been made which is applicable to the payment of claims of this character.

“ I therefore return the papers, with a recommendation that an appropriation be made by Congress for its payment.

“ I am, sir, with great respect, your obedient servant,

“ CALEB B. SMITH,
“ Secretary of the Interior.

“ HON. GALUSHA A. GROW,
“ Speaker of the House of Representatives.”

At the last session of the Forty-first Congress the claim was passed by the House by a two-thirds vote, and this committee unanimously reported in favor of its passage by the Senate, but owing to the lateness of the session no action was taken upon it by the Senate.

Your committee are of opinion, from a careful examination of the case, that this claim is embraced within the acts of the 3d and 21st of October, 1780. The half-pay should terminate on the 24th day of March, 1818, when Lieutenant Wheaton was placed on the pension-roll, and there should be deducted from the said half-pay any payments made by the Government to said Wheaton on account of his said services.

Your committee report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1874.—Ordered to be printed.

Mr. BOGY submitted the following

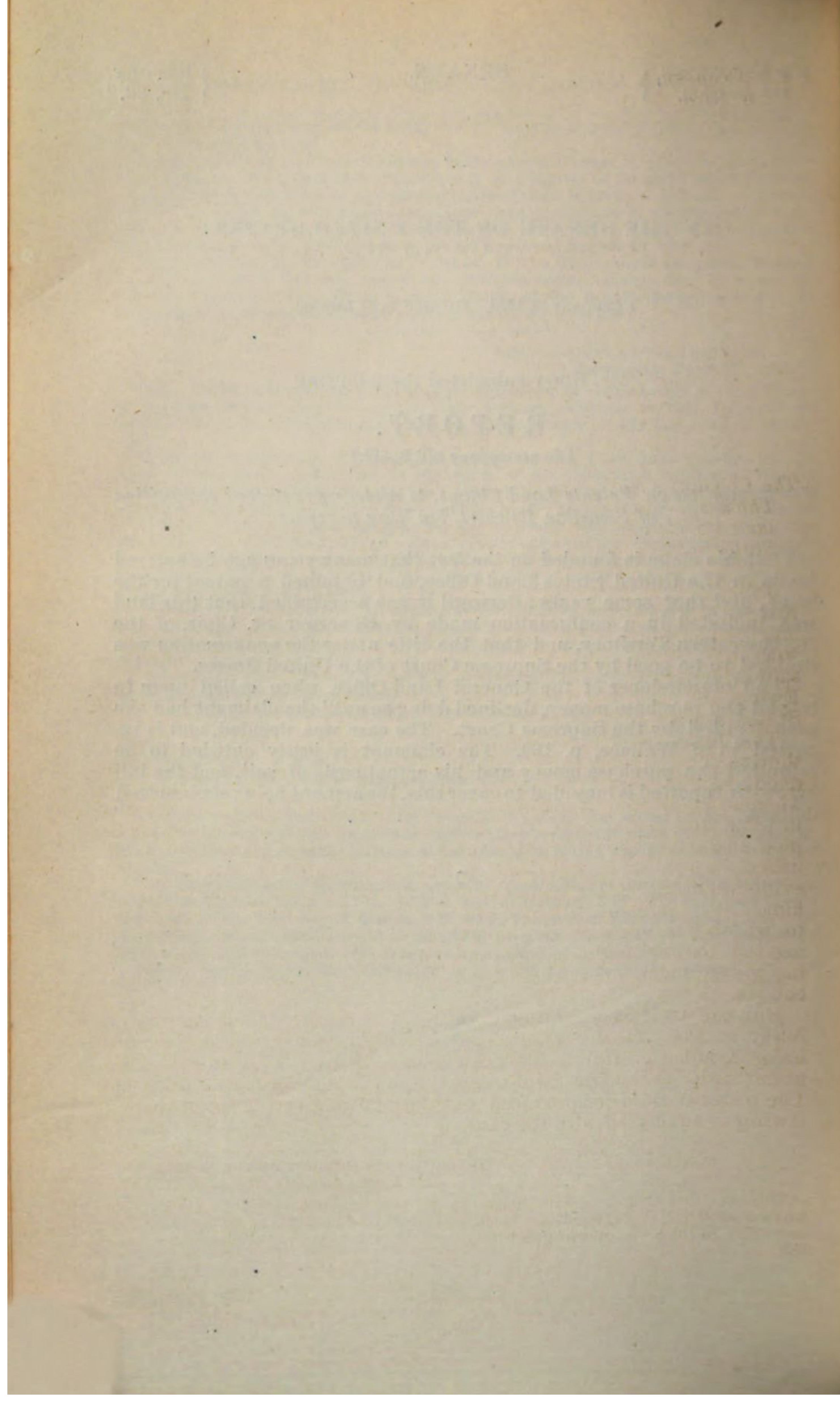
R E P O R T :

[To accompany bill S. 419.]

The Committee on Private Land-Claims, to whom was referred the petition of Sebastian Reichert, beg leave to report :

That his claim is founded on the fact that many years ago he entered lands in the United States Land-Office, and obtained a patent for the same, and that some years afterward it was ascertained that this land was included in a confirmation made by Governor St. Clair, of the Northwestern Territory, and that the title under the confirmation was decided to be good by the Supreme Court of the United States.

The Commissioner of the General Land-Office, when called upon to refund the purchase-money, declined doing so until the claimant had the case decided by the Supreme Court. The case was decided, and is reported in 6 Wallace, p. 160. The claimant is justly entitled to be refunded the purchase-money and his actual costs of suit, and the bill herewith reported is intended to cover this, the amount being six hundred dollars.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1874.—Ordered to be printed.

Mr. SCOTT submitted the following

R E P O R T :

The Committee on Claims, to whom was referred the petition of John P. Thomas, administrator of the estate of Rev. Robert S. Thomas, of Kansas City, Mo., praying for compensation for property destroyed by United States soldiers, have considered the same, and submit this report :

John P. Thomas, as administrator of Rev. Robert S. Thomas, late of Kansas City, Mo., deceased, presents this petition praying that a law may be passed awarding to him as such administrator the sum of \$5,000, with interest from 13th August, 1863, the value of a certain building in said city, occupied as a military prison by order of Brig. Gen. Thomas Ewing, and destroyed by falling in consequence of the acts of the United States soldiers.

The letters of administration which he attaches to his petition authorize the petitioner in the usual form to secure and dispose of "the goods and chattels, rights, and credits which were of the said Robert S. Thomas at the time of his death," &c. He is represented to have died in 1859, and the building for which compensation is claimed was occupied and fell in 1863. If the claim were otherwise satisfactorily established, the petitioner's prayer could not be granted in the absence of evidence of title in his ancestor, and that he is the only child to survive him. We could not authorize him as administrator to receive money to which his brothers and sisters may be entitled, or which, even if needed to pay creditors, could not be paid to him without security being given under supervision of the court having jurisdiction of his accounts.

But the evidence submitted does not satisfactorily establish the liability of the United States to pay for this property. It is alleged to have been occupied from the latter part of July to 13th August, 1863, under order of General Ewing, as a military prison for female prisoners. The order itself is not produced, but the following certificate of General Ewing is submitted with the case :

HEADQUARTERS DISTRICT OF THE BORDER,
Kansas City, Mo., September 11, 1863.

This certifies that a certain house in McGee's addition to Kansas City, Mo., known as "No. 13 Metropolitan block," was occupied as a prison, by my order, from some day in the latter part of July, 1863, until the 13th day of August last, when it fell.

THOMAS EWING, JR.,
Brigadier-General.

Taken on the spot, and so recently after the occurrence, it is singularly barren of facts which he would be presumed to know. He says "it fell," but from what cause, by whose fault, or with what consequences, is not stated. Whether the certificate was given to authorize payment of rent or to sustain a claim of the character now presented, it is destitute of any estimate of an amount that would be proper for either.

The only witness who undertakes to narrate how the casualty occurred is Charles H. Vincent, who, after describing the building and its location, says:

Said building was situated and adjoined on the south side by a two-story brick building, owned by Mrs. Elizabeth Cocherel, and which had previously been used for a guard-house by the United States military authorities, and the partition-wall between the two buildings was a common wall to both buildings; that is, but one wall between the two buildings, and the joists of both buildings on which the floors were laid met or came together in said wall; the first set of joist on the north side of the Mrs. Cocherel building, on which the second floor rested, were supported by partitions and center-posts or columns set upright. While the said Mrs. Cocherel's house was occupied for a guard-house as aforesaid, the soldiers cut away or removed the center-posts or columns and partitions, leaving no support for the roof and joist of the Cocherel building; that some time after said columns or posts and partitions had been removed by the soldiers this affiant noticed that the girders in the center of the Cocherel building on which the joist rested had given away, and the building was about to fall.

He proceeds to say that the Cocherel building did fall, and that as a consequence of the joist meeting in the wall common to it and the Thomas building, that fell also.

This statement fixes no time for the occupancy of the Cocherel house by the guard, except that it was before the occupancy of the Thomas house; it gives no particulars of the removal of columns as personally known by the witness; does not state whether the guard continued to occupy, or whether the owners had resumed the custody and care of the Cocherel house, and is altogether too general as an *ex-parte* affidavit to fasten liability upon the Government for the value of the Thomas building as a consequence of the alleged acts of the soldiers while occupying another property.

The other witnesses speak only of the value of the property, and show that it fell, but give no personal knowledge of how its fall was caused. A physician states that he visited professionally one of the female prisoners the morning before the building fell; and that he saw nothing wrong with it at that time, showing that the military authorities had not then probably any notice of danger from the condition of the adjoining house. If occupied up to the day of the accident, it is singular that the testimony of but *one* witness is submitted to show that the acts of the soldiers in the adjoining house caused the fall of the one claimed for, and that no notice of the perilous situation of the house and its female inmates is brought home to the United States officers, who would be expected to look after the safety of the house and its occupants.

The evidence does not satisfy us of the liability of the Government, and we report that the claim ought not to be allowed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1874.—Ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Joseph R. Curtis, praying compensation for extra work in the erection of the branch-mint at San Francisco, have had the same under consideration, and submit the following report:

Joseph R. Curtis prays for relief in the sum of \$26,096.10, with interest at 6 per cent. per annum from February 6, 1854, which sum he alleges is due to him for extra work performed by him in the construction of the branch-mint at San Francisco, under a contract entered into in 1853. The aggregate amount claimed is separable into three divisions.

First. For extra work done by order of the commissioners on the part of the United States who superintended the building, to the value of \$8,955.

In a proceeding in the Court of Claims judgment was rendered in his favor for part of the sum, viz, \$2,070.90, and he claims the balance \$6,884.10. The judgment for the smaller sum was on the ground that the cost of the building was limited by Congress to \$300,000; that claimant had already received \$297,929.10, and that the balance, \$2,070.90, was the limit for which the court could render judgment, intimating very strongly that the claimant was entitled in equity to the balance, and that the court would grant it were it not for the bar of the statute.

Second. For money expended under direction of United States officers, not included in above claim, for erecting a separating department, which he alleges was not called for by his contract, but which the court held did come within the letter of the contract, \$9,212.

Third. For other expenditures, "beyond what was required by his contract," of which he was unable to procure legal proof at the time the case was pending in said court, but is now able to present proof sufficient to make his claim good for the sum in equity, \$10,000.

First.....	\$6, 884 10
Second.....	9, 212 00
Third.....	10, 000 00
Total.....	26, 096 10

The second and third items his counsel now abandons and confines the claim to the sum of \$6,884.10.

Before proceeding to consider this we refer to the case of Curtis vs. The United States, the case in the Court of Claims before alluded to,

(2d Nott & H., 144.) In that proceeding, also, the petitioner presented three distinct demands. As stated in the brief of his counsel from the proofs they were—

1. For money expended in altering the building in consequence of the change of the grade of the street on which it was built, ordered by the city councils of San Francisco after the contract was entered into, \$5,612.35.

2. The additional expense to which claimant was put in erecting a separating department in the mint, which, as he alleges, was not contemplated or provided for in the contract, but was erected by direction of the superintendent, \$6,851.

3. Extra work done by order of the superintendent of machinery, not embraced in the two preceding items, \$5,693.65.

His claim thus aggregated, according to the proofs as presented in the brief of his counsel, \$18,167. In the present petition it is stated at \$26,096.10; and if the amount for which judgment was rendered in Court of Claims be added, viz, \$2,070.90, it would amount to \$28,167, showing an increase of exactly \$10,000, to sustain which he declares in his petition he is now able to present proofs sufficient to make his claim good for this sum in equity. Finding this allegation in the petition, we naturally looked for these proofs and were surprised to find no addition whatever to the testimony submitted in the Court of Claims. A certified copy of the testimony of witnesses adduced for claimant was furnished, but although petitioner, in referring to the proceedings in the Court of Claims, states that "he herewith submits a copy of all the proofs taken in said action," we do not find among them the testimony taken on behalf of the United States, which an examination of the record showed had been submitted and was on file, a practice which we must take occasion to say is not calculated to commend a case thus presented to the most favorable consideration. This circumstance has led us to look more closely into the record than we might perhaps otherwise have done in disposing of the remaining part of the claim.

The sum of \$6,884.10 is claimed as a balance left of \$8,955, which the Court of Claims found as the value of extra work done by contractor, under order of the commissioners on the part of the United States to superintend the construction of the mint; the court having rendered judgment for so much of that sum as, added to the previous payments, exhausted the sum of \$300,000, to which the cost of the building was limited by act of Congress. It will be seen from this statement that the claim for \$10,000 and for the separating department being abandoned, the sum of \$8,955, which the Court of Claims found as the value of the extra work done by the contractor, must have comprised in it a part of the claim now abandoned, for the plaintiff's own proofs of the first and third items in the Court of Claims, as presented by his counsel, only aggregated \$11,306.

In deciding the case the court, referring to the limitation in the act of Congress, and to the claim made for the amount of \$6,884.10 exceeding it, say (page 152, 2d N. & H.):

What, then, can the claimant here recover if the Government be regarded simply as the principal and its officers as its agents? At the beginning of the transaction the principal gave to the contractor the plainest and clearest notice that all of its expenditures and liabilities should not exceed a fixed and certain sum. The statute became to the claimant notice in law and in fact that the expenditures could not be carried beyond certain bounds; and it was, moreover, by direct reference stamped upon and made a part of the contract which is the foundation of the claimant's rights. This condition the law-making power never relinquished, nor by any act waived, nor at any time authorized the executive officers to exceed. The law-making power was

here the Government, and the executive officers were its agents, and no act of theirs could bind their principal for a greater sum than had been consented to and agreed upon.

Viewed as a transaction between private persons, the claimant must be deemed to have gone beyond the fixed limit of his agreement at his own risk, trusting for recompense to the liberality of the party with whom he dealt—a liberality which courts of justice cannot enforce. Viewed as a transaction between a contractor and the Government, the claimant must be held to abide by the conditions which the statute imposed both upon him and the officers who directed his expenditures. Were such statutory provisions to be disregarded, and were judgment to be given wherever a claimant shall prove that he has done work or rendered service under the direction of an executive officer, it would enable the executive branch of the Government, with the aid of this court, to annul a law of Congress, and to throw down any limitation which Congress might impose upon the cost of our public works.

Are the circumstances, then, such as to warrant or demand the exercise of such "liberality" by Congress as to throw down the limitations which the act imposed upon the cost of this building? This is what the claimant asks us to do, as he has not yet accepted the judgment given by the Court of Claims, but asks us to supplement that judgment by an allowance of the balance which the court thought he ought to have. We must, then, traverse the ground over which the court went in reaching its conclusion.

We begin with the act authorizing the building. (Act July 3, 1852, 10 Stat., p. 13.) It was to be a branch-mint for the coinage of gold and silver, and its cost was limited to \$300,000. This limitation is repeated in the law appropriating the money. (Act August 31, 1852, 10 Stat., p. 96.) The act of March 3, 1853, (10 Stat., p. 188,) extended the time for receiving bids, required the appropriation to be expended in the *erection* of the building, and prohibited the purchase of any building for that purpose. The contract was awarded to W. A. Barton, April 2, 1853, at \$239,913.50. He, on April 11, 1853, assigned it to Joseph R. Curtis, with whom the Secretary of the Treasury executed a contract April 15, 1853. A supplemental contract was made July 15, 1853, for enlarging the building by extending it over a lot of twenty feet additional, purchased by Curtis for the United States. Alterations and additions were provided for by this contract, for which \$28,909.10 was to be paid in full for such enlargements with said changes and alterations "without extra charge or demand of any kind except for the lot," and for that the price was fixed at \$15,000.

The sum fixed in the original contract.....	\$239,913 50
The alterations provided for.....	28,909 10
The price for lot.....	15,000 00
Amount paid for machinery for separating department...	14,000 00
Make ...	297,822 60

Referred to as paid under the contract, there being a slight variance from one of these amounts paid.

From the petition presented in the Court of Claims we learn that, notwithstanding the provision in the act of March 3, 1853, prohibiting the purchase of a building, the contract of April 15, 1853, which was executed in Washington, was really a purchase of the assay-office, before that time occupied by the firm of which Curtis was a member, and that in the specifications accompanying the agreement of July it was provided that the enlargement of the building was to be "built on or tied into" the assay-office thus purchased. The court decided that the terms of the contract required Curtis to erect a separating department,

as before stated, and \$14,000 was paid him for machinery for that department.

On 31st March, 1854, the commissioners to superintend the erection of the mint examined it and reported it completed, but found that it varied from the contracts in five particulars, which they specified, one of which was that it was not finished and delivered for two months after the time agreed upon.

On April 11, 1854, in a letter, signed by Curtis & Perry, by A. Humbert, attorney for P. A. Perry, it is alleged that these deficiencies have been supplied; and a statement is made of various items of extra work which they say they had done, closing with these words:

In requesting this statement, which are not all the extras, it is not intended as a basis for any claim for additional compensation, but merely as an offset for some of the delinquencies mentioned in your acceptance of the 31st ultimo, and to prove to the Secretary of the Treasury that the contractors have used their utmost exertions in faithfully performing their duty.

On April 14 the architect says, in a note addressed to Messrs. Hammond and Bridge, the commissioners:

I have examined the communication addressed to you by the contractors for the branch-mint building, and find the statement in regard to the extra expense and delay consequent on raising the grade of the street is correct. It is also true that some changes have been made by request of the officers of the mint, the better to accommodate their business.

Water-closets were built, extra timbers put in the roof, plaster and limning on the ceilings in lieu of paint, and other additions not particularly specified in the contract, but indispensable for the convenience and proper finish of the building. The change which you permitted them to make in dispensing with the stone covering for the roof, as none could be obtained, was deemed equivalent to the other additions. No extra charge was contemplated or should be made.

On 29th April, 1852, Mr. Curtis addressed a letter to the Secretary of the Treasury claiming that he had incurred an extra expense of over \$60,000, and enumerating among the items the very charges embraced in the foregoing letters, for which any extra charge was expressly disavowed.

This claim was examined by Capt. A. H. Bowman, engineer in charge Treasury Department, who made report dated March 12, 1856, showing that it ought not to be allowed, and closed by saying:

I beg leave, therefore, to say that I think both the contract and the law under which it was made clearly required the contractor to provide the building with all the necessary apparatus for assaying, and that the claims for other work were offsetted as above stated, and that he has neither legally nor justly any claim for further compensation for work done or apparatus and machinery furnished for this building. (Page 20, defendant's evidence, Court Claims.)

The following account and indorsement of the Secretary of the Treasury closes the transaction:

The account of J. R. Curtis, contractor, for building and delivering branch-mint in San Francisco, settled in the Department May 4, 1854, set forth the contract amount thereof at.....	\$283,929 10
A certificate of the architect and commissioners certified the acceptance of the building, with certain specified exceptions; and A. H. Bowman, architect, furnished an estimate of the value of these exceptions, (which it was determined to deduct and suspend for further information,) amounting to.....	12,415 00
Leaving payable at that time.....	271,514 00
Of which there was paid on and before said settlement.....	250,000 00
Leaving unpaid	21,514 00

Since said settlement a further report from the commissioners and certificate from the architect of the building has been received and are herewith transmitted to the accounting officers. From these it appears that the building has been accepted in full. The modifications and omissions constituting the exceptions being made up and set-off by various additions and expenses not required by the contract.

Upon full consideration of the report of the commissioners and the certificate of the architect as well as the letters which accompany them of the agent of the contractors, I assent to this adjustment, and therefore authorize the deduction and suspension of \$12,415 to be paid as part and in addition to the balance before mentioned as due to the contractor.

JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT, *June 7, 1854.*

On 12th June, 1854, Treasury warrant No. 2966, for \$33,929.10, was drawn in favor of Mr. Curtis and paid to his order June 17, 1854.

It will thus be seen that various additions and expenses not required by the contract were considered as met by set-off of the modifications and omissions which constituted the exceptions, and that the full amount retained for these exceptions was upon this adjustment paid over to the contractor.

The allegation made by claimant in his petition to the Court of Claims that the Secretary of the Treasury did not dispute the justness of his claim for extra work, but said there was no appropriation to meet the claim, is not supported by any evidence; and we cannot see how he could make such a declaration consistently with this settlement. In addition to that, Captain Bowman, in addressing the Secretary and quoting the allegation of petitioner, says, "these assertions, you are aware, are incorrect." (Page 17, defendant's evidence, Court Claims.)

The assertion that the money was received under protest is also unsustained by any evidence, either in the Court of Claims or before this committee.

With this testimony before us it is perhaps not necessary at this time to inquire whether we would provide for the payment of the judgment which the Court of Claims rendered; but, after the lapse of almost twenty years from the completion of this contract, the committee cannot find enough in the evidence to justify them in opening the settlement made by Mr. Curtis with the accounting officers of the Government for the purpose of enabling him to assert his claim, and upon considering the whole case think it ought not to be allowed.

S. Rep. 68—2

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

R E P O R T :

[To accompany bill S. 433.]

The Committee on Claims, to whom was referred the petition of Mrs. Susan A. Shelby, praying compensation for cotton seized at Port Gibson, Mississippi, in 1864, have had the petition, proofs taken, &c., accompanying the same, under consideration, and beg leave to submit this report :

The facts established and presented in support of the claim of the claimant are substantially and sufficiently set forth and referred to in a report made by the Senate Committee on Claims during the second session Forty-first Congress, (S. R. No. 186,) and the same is made part of this report and herewith filed. This claim has been continuously before Congress since the 28th of May, A. D. 1868, and favorably recommended in both branches of Congress, but has never been finally acted upon. The committee are of opinion that the claim is a just one and ought to be paid. They report back the accompanying bill and recommend that it be passed.

41ST CONGRESS, 2D SESSION. SENATE REPORT NO. 186.

MAY 26, 1870.—Ordered to be printed.

Mr. KELLOGG made the following report : [To accompany bill S. No. 942.]

The Committee on Claims, to whom was referred the bill (S. 942) for the relief of Susan A. Shelby, have had the same under consideration, and make the following report :

The claimant is a widow lady and during a portion of the war resided at Port Gibson with her family, consisting of two daughters. At the time of the secession of Mississippi she was the owner of a small property in Port Gibson, and possessed in her own right thirty-five slaves, whom at an early period during the war she emancipated.

During the progress of the war, and as early as 1863, she invested what money she had in cotton, with the hope of saving something for her children and also to enable her to pay off a small mortgage on her homestead, and believing that the Union forces would aid her in getting it into the Federal lines, she succeeded in purchasing one hundred bales of upland cotton, which she secreted on the plantation of a friendly neighbor in the vicinity of Port Gibson. It appears that she was encouraged by General McPherson and leading Union citizens to adopt that course as the best way to save something for herself and children.

After she had purchased the one hundred bales of cotton, she obtained permits, first from General McPherson, then from General Slocum, and lastly from General Dana, (the successive commanders at Vicksburgh,) to transport her cotton to Vicksburgh. After considerable delay she obtained the necessary transportation to move the cotton to the river, but the small detail of Union soldiers which had been furnished to protect the cotton *in transitu* were overpowered, the cotton was captured by the rebels, and carried to a place where they stored their cotton.

Incited by this attempt to get her cotton out of the confederate lines, and also by her well-known loyalty, the confederates threatened her with personal violence, and, by a system of persecution and abuse, drove the claimant from her house. She fled first to Vicksburgh, and thence to New Orleans, where she remained until the close of hostilities.

After that section of the country had been brought under the authority of the United States, Colonel George W. Jackson, commanding the Ninth Indiana Cavalry, was sent to Grand Gulf and Port Gibson, with orders to capture and secure to the United States all the confederate cotton in Claiborne County, Mississippi. In pursuance of such orders he collected a large amount of cotton, which was turned over to the Treasury agents, or sent to Colonel Earle, who was then stationed at Rodney, to be by him turned over to the Treasury agents, and shipped either to Memphis and Cincinnati, or New Orleans for sale. It appears that the one hundred bales of cotton belonging to claimant were stored with the confederate cotton, and on or about the first day of June, 1865, it was seized by Colonel Jackson's command, together with other cotton. Of this cotton one hundred and thirty-four bales were turned over to A. A. Dewey, Treasury agent at Port Gibson, and by him shipped to Memphis and thence to Cincinnati, where it was sold by William P. Mellen, general agent of the Treasury Department. The proceeds of seventy-two bales of this cotton were released by order of the President to a Mrs. Miller; the remaining sixty-two bales were sold; the net proceeds, amounting to \$7,294.68, were paid into the Treasury.

The remaining thirty-eight bales were shipped by Colonel Jackson, with a lot of one hundred and sixty-five bales, to Colonel Earle, at Rodney, where it was turned over to Treasury Agent J. J. Mushaway, by whom it was shipped to New Orleans, where it was sold, and the net proceeds, amounting to the sum of \$13,270.93, was paid into the Treasury. Of this amount claimant is entitled only to value of thirty-eight bales, and as the cotton realized only \$80.43 per bale, it would amount to \$3,056.34. The amount realized for the sixty-two bales added to this sum would amount to \$10,351.02.

Colonel Jackson admits that Mrs. Shelby's cotton was seized and turned over to the Treasury agents, and says that he would have released her cotton and returned it to her, but that he had no authority to do so. This Colonel Jackson states in a letter directed to claimant at the time of the seizure, and he reports it in a letter to General Grant, in which he recommends a settlement of the claim. This letter bears the following indorsement by General Grant: "I would join with Colonel Jackson in recommending that a fair settlement be made with Mrs. Shelby for cotton of hers which Government got actual possession of."

The loyalty of claimant, her ownership of the cotton, and the seizure of the same by Colonel Jackson's forces, are well established by the concurrent testimony of many witnesses, and are admitted by the Federal officers who were there at the time and acquainted with all the facts. Not only was claimant loyal, but she did all she could in aid of the Federal Army. The main difficulty connected with this claim appears to have been in identifying the cotton and in tracing the proceeds of it into the Treasury of the United States. The House Committee on Claims was strongly impressed with the justice of this claim, and made several attempts to get official evidence of the receipt of the proceeds by the Treasury Department, but apparently failed to do so; notwithstanding this they recommended a bill for the payment of \$5,000, passed the House at the last session.

Since the House bill has been before this committee, the Treasury Department have been requested to furnish information on this subject. A full report of all cotton seized in the county of Claiborne, Mississippi, was sent to the committee. All previous calls it seems had only requested a return of the facts concerning Mrs. Shelby's cotton, but as her name did not appear in the records in connection with this cotton, it having been stored with the confederate cotton, the return from the Department did not furnish the necessary evidence.

The return to the last call upon the Department furnishes all the facts connected with the seizure, shipment, and sale of all the cotton taken in that county; and in comparing the evidence in this case with the dates of seizures and shipments of cotton from that county, your committee are satisfied that her cotton was seized by Colonel Jackson's command. That it was turned over to the Treasury agents, shipped, and sold as above described, and the proceeds thereof paid into the Treasury of the United States, amounting to the sum of \$10,351.02. They therefore report the accompanying bill, as a substitute for House bill No. 408, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Mary C. Haile, praying to be allowed a pension, submit the following report:

The petitioner is the widow of Christopher M. Haile. He was a cadet at West Point, but resigned and settled in Louisiana, where he married Mrs. Haile in 1839.

Upon the organization of the ten regiments for the Mexican war, he was appointed first lieutenant, and on the 23d of May, 1847, captain in the Fourteenth United States Infantry. He was honorably discharged at New Orleans on July 28, 1848, by reason of the expiration of his term of service, and in accordance with General Order No. 36, dated July 6, 1848, disbanding the regiment. He died at his home in Iberville Parish, in the State of Louisiana, on the 10th September, 1849.

On the 1st of August, 1871, the widow made her declaration for a pension, claiming the same under the act of July 21, 1848, and the amendments of the same of the 2d day of February, 1849, and 3d of June, 1858. As explanatory of her long delay in applying for a pension, she swears that she was ignorant of the existence of a law allowing her a pension until within six months of that time; and further, that until the rebellion, and while her brother lived, she was under no necessity for a pension, as her own means and her brother's aid supplied her necessities.

There is an entire absence of evidence in the military record of this officer in the War Department of any disability while he was in the service, though the Adjutant-General's Office was twice appealed to for proof on this head. On the contrary, that office on the 20th of November, 1873, certifies to the Commissioner of Pensions as follows:

"The records of the regiment on file show that Captain Haile left it at the city of Mexico January 12, 1848, on leave of absence until February 29, 1848—(granted with view of acceptance of his resignation which he had tendered, to attend to private business, and which was subsequently withdrawn)—and went to New Orleans, where, by special orders from headquarters at New Orleans, dated March 12, 1848, he was directed to take command of Baton Rouge barracks, Louisiana. The monthly returns of that post from March to June, 1848, inclusive, report him in command, and acting assistant quartermaster and acting assistant commissary of subsistence of post from March 12, 1848. The return for July, 1848, reports him relieved from duty

July 31, 1848. It does not appear from any of these records of the company and regiment to which he belonged, or of the posts where he served, that he was sick, on sick-leave, or in hospital during his period of service as above."

Before approaching the parol evidence it is proper to say that in a claim originating so far back as this, more than twenty years, indeed, before an application was made for a pension, and particularly when in the decision of the case the committee must depend entirely upon *ex parte* statements made by witnesses, of whose claims to be believed we can ordinarily know nothing, we should move with extreme caution and require the most satisfactory proofs. More especially should this be so where the case has been examined by men expert in weighing this class of testimony upon which we must act, and after protracted examination has been disallowed. Below will be found the letter of the Commissioner of Pensions, showing the grounds upon which the application for a pension was rejected in his office. It is further to be added that in her appeal to Congress the widow submits no evidence which was not before the Pension-Office.

The following is substantially all the parol testimony on the point of disability:

Dr. Hall testifies on the 19th of January, 1871, more than twenty-one years after Captain Haile's death. His statement is that when the captain entered the service he was in sound and vigorous health, and that when he left it he was "suffering under debility from exhaustion and exposure incurred during the term of his service in the Mexican war." He was his family physician up to the period of his death. He speaks of his temperate habits, and says "he died of diseases under which he was suffering at the time of his discharge, and under which he was *not* suffering when he entered the Army in 1847." But Dr. Hall does not inform us what those diseases were.

Dr. McCormack, a surgeon of the Army, certifies, on the 30th of August, 1873, that Captain Haile was returned to the United States from the theater of war in Mexico among a lot of invalid officers and soldiers of the Army, landing at New Orleans; that he was broken down in constitution and suffering severely from chronic diarrhea or dysentery; that he assigned him to Baton Rouge hospital, where he remained sick until the end of the war and until the regiment to which he belonged was mustered out of service.

In respect to this certificate it is to be remarked that it was given nearly twenty-four years after Captain Haile's death, is not sworn to, and is not supported by the records in the Adjutant-General's Office above quoted. If the officer was on the sick-list at Baton Rouge hospital during the whole, or, indeed, during part, of the time after his return, it is matter of great surprise that no record should have been made of the fact by the surgeon in charge. Besides, on one point it is contradicted by the statement of P. O. Herbert, who certifies that Captain Haile was temporarily in charge of the depot at Baton Rouge. The Adjutant-General also certifies that Captain Haile was in command of the Baton Rouge barracks, and acting assistant quartermaster and acting assistant commissary of subsistence of the post, for several months.

Upon the whole, the committee do not feel at liberty to disturb the decision made at the Pension Office, and ask to be discharged from the further consideration of the petition.

Appended is the letter of the Commissioner of Pensions, showing the grounds of his rejection of the claim:

DEPARTMENT OF THE INTERIOR, PENSION OFFICE,
Washington, D. C., February 4, 1874.

SIR: In compliance with your request of the 24th ultimo, I have the honor to transmit herewith the papers in the claim of Mrs. Mary C. Haile for pension as the widow of Christopher M. Haile, some time captain Fourteenth United States Infantry, and to state:

Claimant, in her declaration filed September 20, 1871, alleges that soldier died September 10, 1849, of disease contracted in the service during the Mexican war. The record of the War Department fails to show that the soldier contracted any disability during his service, which expired July 28, 1848, and no parol evidence has been filed to show that the cause of his death was the result of his military service. Without such evidence the claim cannot be admitted under the general pension laws.

Very respectfully, your obedient servant,

J. H. BAKER,
Commissioner.

Hon. D. D. PRATT,
Chairman Committee on Pensions, U. S. Senate.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1874.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

Your committee have had under consideration the petition of William Martin, asking to be placed on the pension-rolls.

He states in his application that he enlisted in the United States Army as private, in 1839, Company F, Second Infantry; that he was mustered out in 1844; and re-enlisted in 1847, Company A, Sixth Infantry, and was again mustered out in 1852. He represents that while in the service he contracted chronic diarrhea, and has since that time been sick and unable to work. His petition is not sworn to, and is supported only by the affidavit of Patrick Donahue, who states that he served in the same regiment with Martin for five years, and that during that time he was sick and unable to serve with his company.

Your committee are of the opinion that there is no evidence in this case which would warrant the committee in recommending that his name be placed on the pension-rolls.

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION

Volume 15, No. 19, May 1, 1914

Published by the American Medical Association

REPORT

The following report was received from the President of the American Medical Association, Dr. J. C. Brannan, dated April 25, 1914:

The American Medical Association has been very busy during the past few months. It has held its annual meeting at the Hotel Sherman in Chicago, Illinois, from October 1 to 10, 1913. The meeting was very successful and was attended by over 1,000 delegates from all over the world. The Association has also been very active in its efforts to improve the medical profession and to protect the public health. It has been successful in securing the passage of the Federal Food and Drug Act, which will regulate the sale of food and drugs in the United States. It has also been successful in securing the passage of the Federal Pure Food and Drug Act, which will regulate the sale of pure food and drugs in the United States. The Association has also been very active in its efforts to improve the medical profession and to protect the public health. It has been successful in securing the passage of the Federal Food and Drug Act, which will regulate the sale of food and drugs in the United States. It has also been successful in securing the passage of the Federal Pure Food and Drug Act, which will regulate the sale of pure food and drugs in the United States.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1874.—Ordered to be printed.

Mr. ALLISON submitted the following

R E P O R T :

Your committee have had under consideration the application of Elizabeth O'Neil, the mother of John O'Neil, who died in the United States Army, on the 6th of November, 1858.

The claim of petitioner was fully considered in the Forty-second Congress, and by act of May 25, 1872, her name was placed upon the pension-rolls, under which she now receives a pension of eight dollars a month. She asks for an increase of pension, and also that the pension now provided by law may begin from the death of her son instead of from the passage of the act of May last.

Your committee, in view of the fact that her case was so recently decided by Congress after a full hearing, think it should not be reconsidered, and therefore recommend a rejection of the claim.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T:

The Committee on Pensions, to whom was referred the petition of Canady O'Brien, submit the following report:

That as no proof is presented as to the increase of the blindness, on account of which increase additional pension is prayed for, and as it appears that a pension was granted him in 1859, and increased by special act of February, 1867, to \$25 per month, the committee do not feel justified at the present time in again increasing, by special act, the pension to the full amount allowed by the general law of March, 1873.

That where a pensioner depends upon a special act for his pension, the committee do not feel warranted in interfering in such cases until after application shall be made to the Pension Bureau to be placed on the rolls under the provisions of the general law of March, 1873, increasing pension to that class of cases heretofore covered by special acts; and therefore ask to be discharged from the further consideration of the case.

IN THE CHAIR OF THE LECTURE

BY THE REV. J. H. H. H. H.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1874.—Ordered to be printed.

Mr. HAMLIN submitted the following

R E P O R T :

[To accompany bill S. 439.]

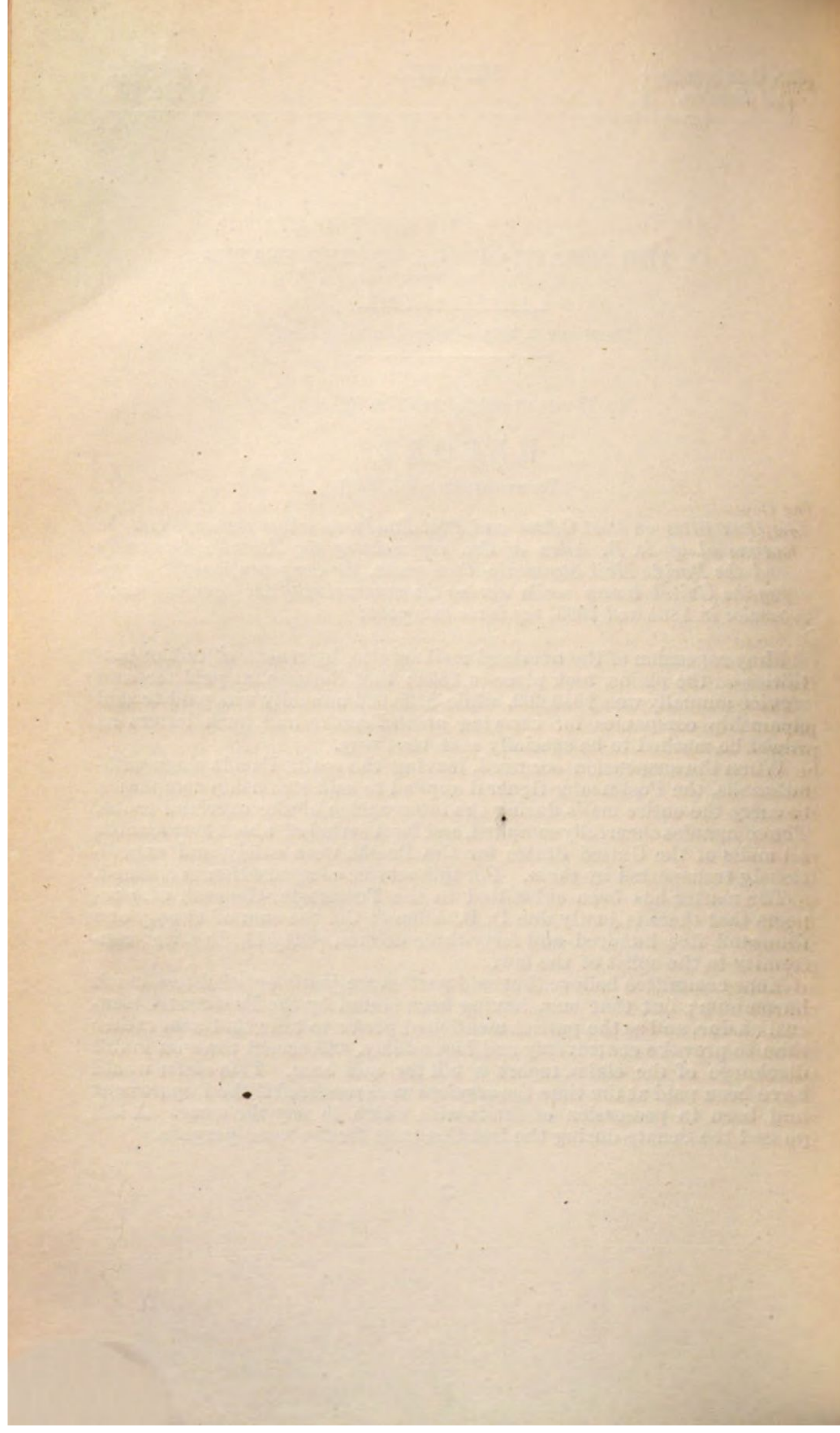
The Committee on Post Offices and Post Roads, to whom was referred the memorial of D. B. Allen & Co., representing the Atlantic Steamship and the Pacific Mail Steamship Companies, for compensation for carrying the United States mails during the suspension of the overland mail service in 1864 and 1865, beg leave to report:

The suspension of the overland mail service, by reason of Indian hostilities on the plains, took place in 1864; that the amount paid for said service annually was \$840,000, while \$160,000 annually was paid to said steamship companies for carrying *printed matter* and such letters as might be marked to be specially sent that way.

When the suspension occurred, leaving the entire Pacific slope without mails, the Postmaster-General applied to said steamship companies to carry the entire mails during the interruption of the overland route. The companies cheerfully complied, and for a period of about four months all mails of the United States for the Pacific were safely and expeditiously transported by them. For this service compensation is claimed.

The matter has been submitted to the Postmaster-General, who reports that there is justly due D. B. Allen & Co. the sum of twenty-one thousand five hundred and forty-three dollars, (\$21,543,) in strict conformity to the spirit of the law.

Your committee believe that said parties are justly entitled to a much larger sum; but that sum having been stated by the Postmaster-General as due, and as the parties mentioned prefer to take that sum rather than to provoke controversy and incur delay, will accept the sum in full discharge of the claim, report a bill for said sum. This claim would have been paid at the time the services were rendered if the Department had been in possession of funds with which to pay the same. A bill passed the Senate during the last Congress for the same purpose.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1874.—Ordered to be printed.

Mr. CHANDLER submitted the following

R E P O R T :

[To accompany bill S. 272.]

The Committee on Commerce, to whom was referred the bill (S. 272) for the relief of Bishop & Co., bankers, of Honolulu, Hawaiian Islands, having had the same under consideration, report :

That, on the 19th day of December, 1873, the Hon. Hamilton Fish, Secretary of State, addressed a letter to the chairman of the Committee on Commerce, United States Senate, accompanied with certain letters relating to a claim of Messrs. Bishop & Co., bankers, of Honolulu, Hawaiian Islands, for \$1,181.73 in gold coin.

The Committee on Commerce, having duly considered the letters and papers relating to the above-mentioned claim, concur in the opinion expressed by the honorable Secretary of State, that "the claim appears to be entirely just and equitable," and therefore report a bill to appropriate the amount of the claim with interest at 6 per cent. per annum, from the time that the amount specified was due.

This claim originated in the failure to pay a draft, on the Department of State, drawn by Mr. Mattoon, the United States consul at Honolulu, and negotiated through the claimants, for the relief of destitute seamen, the appropriation having been exhausted at the time the draft was presented. Messrs. Bishop & Co., negotiated the draft through the bank of California, which, on being apprised of the non-payment by the Department of State, charged them interest on the sum advanced, and the claim is for the re-imbursement of the sum so charged.

The occasion of the exhaustion of the appropriation was the unusual amount of bills drawn by the consul at Honolulu, made necessary by the wreck about that time of a large fleet of whaling vessels in the Arctic sea near Behring's Straits, the crews of which, in great numbers, were carried to Honolulu, when it became the duty of the consul according to law to relieve them.

IN THE MATTER OF THE ESTATE OF

JOHN A. BROWN, DECEASED.

IN PROBATE COURT OF THE COUNTY OF

REPORT

OF THE

ADMINISTRATOR OF THE ESTATE OF JOHN A. BROWN, DECEASED, TO THE PROBATE COURT OF THE COUNTY OF

IN compliance with the order of the court in the above entitled matter, the undersigned administrator of the estate of John A. Brown, deceased, do hereby report to the court that he has faithfully and honestly administered the estate of the deceased, and that he has paid to the creditors of the estate the amounts due them, and that he has distributed to the heirs of the estate the amounts due them, and that he has accounted for all the property of the estate, and that he has no other property of the estate to report.

This report is made in compliance with the order of the court in the above entitled matter, and the undersigned administrator of the estate of John A. Brown, deceased, do hereby certify that the same is true and correct.

IN WITNESS WHEREOF, the undersigned administrator of the estate of John A. Brown, deceased, has hereunto set his hand and seal at the City of New York, this 1st day of January, 1874.

JOHN A. BROWN, Administrator of the Estate of John A. Brown, deceased.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of John Coonan, late second lieutenant Company A, Eighteenth Regiment New York Cavalry, praying an increase of pension, submit the following report:

This petition was before the Forty-first Congress in its present form, was referred to this committee, and on May 2, 1870, a report was made to the Senate, as follows:

It appears from the evidence before the committee that although at the time the petitioner contracted his disability he only held the rank of sergeant, he was at the time acting as second lieutenant, and shortly after received his commission. It also appears probable from the evidence that his disability was such as to fairly entitle him to a pension of \$15 per month. The committee are not in the habit of reversing the decisions of the Pension-Office as to the extent of disability, but they are of opinion that the petitioner is fairly entitled to a pension according to the position which he filled at the time of receiving his injury, and report a bill accordingly.

The bill thus reported was enacted into a law on May 17, 1870, (see private act No. 38,) and Sergeant Coonan has been in the receipt of a pension at the rate of \$15 per month from the date of that act.

If the petitioner's disability is such as to entitle him to a pension at the rate of \$18 per month, he can, doubtless, procure the same by the surrender of his present certificate, and by applying for an increase, under the act of June 8, 1872, to the Pension-Office. The committee append hereto the letter of the Commissioner of Pensions in relation to the case, and ask to be discharged from the further consideration of the petition.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
PENSION OFFICE,
Washington, D. C., February 4, 1874.

SIR: In compliance with your request of the 29th ultimo, I have the honor to transmit herewith the papers in the case of John Coonan, some time sergeant and lieutenant Company A, Eighteenth New York Cavalry, certificate No. 96,985; and, in response to your request for a statement of the reasons why his pension was fixed at \$8 per month, he being a 1st lieutenant, and his disability the loss of one leg, to state:

It is shown in evidence that Coonan received the injury to right knee while a sergeant of the company aforesaid, and was treated therefor prior to his muster in as lieutenant. His pension was therefore rated in accordance with the rank held by him at the time he received the injury, and he continued to receive that rate (\$8) until the passage of special act private No. 38, which directed to increase his pension from \$8 to \$15 per month from that date, when his pension was thus increased. His name was dropped from the rolls by reason of re-enlistment in the general service March 21,

1871, but was, upon application after discharge therefrom, restored at \$15, as fixed by said special act.

It is held by claimant that his disability is equivalent to the loss of a leg, and should therefore receive \$18 per month, as provided by act of June 8, 1872. Whether his disability is that great is not shown in evidence; his pension, however, being increased by special legislation, could not be further increased under the general law, as the rate thereof is fixed by the act which increased it at a time when it could not have been rated higher than total, as it was shown then by medical examination. Application for increase was therefore rejected in accordance with the provisions of the act of July 7, 1870, and re-enacted by section 27, act of March 3, 1873.

It may be proper to suggest that should Mr. Coonan consider himself disabled in such a degree as to entitle him to the benefits of the act of June 8, 1872, and be enabled to prove such disability to the satisfaction of this office, he could surrender the pension now paid to him under his present certificate, and apply for pension under the general law.

* Very respectfully, your obedient servant,

J. W. BAKER,
Commissioner.

HON. D. D. PRATT,
Chairman Committee on Pensions, United States Senate.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 322.]

The Committee on Pensions, to whom was referred the bill "granting a pension to Mrs. Alme D. Brooks," with the petition and accompanying papers, after having had the same under consideration, respectfully report:

That it appears that General W. T. H. Brooks entered the Army in 1837, as a cadet at West Point Academy, graduated in 1841, and soon after entered the service in the field in Florida as a brevet-lieutenant, and afterward served with distinction in the Mexican war. That, after the close of the Mexican war, he was stationed at various posts on the frontier and in New Mexico, and generally performed the duties of a soldier in the Regular Army, until the commencement of the late civil war, when he, with the rank of captain in the Regular Army, was commissioned a brigadier-general of volunteers, September 28, 1861, and continued to serve as such until March 12, 1862, when he was promoted to rank of major in the Regular Army, and subsequently to rank of major-general of volunteers. That, on the 18th of April, 1864, his appointment as major-general was revoked, and he returned to his command as brigadier-general. That, afterward, he tendered his resignation as major of infantry and brigadier-general of volunteers, which resignations were accepted July 14, 1864, and he returned to private life. That on the 18th of July, 1870, he died in Huntsville, Alabama, after a service in the Army of some thirty-three years, including four years of preparatory education at West Point Academy. It does not appear from any evidence before the committee that General Brooks was disqualified by sickness or disease, contracted at any previous period from active service in the field during the three years he was on duty in the late civil war. Nor does it appear from anything before us that he left the service in consequence of sickness or disease incurred during that time.

We presume no such evidence exists, or it would have been presented to the committee. The petition of Mrs. Alme D. Brooks, widow of the late General W. T. H. Brooks, for whose benefit the bill we are now considering was introduced and referred to this committee, states that her late husband did contract disease in the service, of which he finally died; but claims, and specifically states, "That the hardships and exposures of the Mexican service, together with the climatic influences of the country, laid the foundation of the disease of which he subsequently died." It therefore becomes material to consider whether the statements of the petitioner on the evidence to be found in the affidavits,

the certificates of the surgeons, or other papers, sustain this ground for relief.

The certificate of E. N. Abadie, surgeon in the United States Army, of date March 16, 1872, states that in the summer of 1852 he accompanied as surgeon a detachment of 500 recruits across the plains to Santa Fé; that on the march one day on the Binnavena River, Maj. W. T. H. Brooks rode up to him evidently suffering intensely. He informed me of his condition "an inability to urinate from an old stricture of the urethra," which I found to be almost impermeable and with great difficulty succeeded in introducing small instruments, giving him temporary relief. The major understanding his case and the use of instruments well, did not place himself under my continuous treatment, and only consulted me two or three times before we parted. Again, in 1855, on my return to Santa Fé, I attended him several times for the same difficulty, and urged him to go east and have an operation performed for a radical cure of his disease.

J. C. McKee, surgeon in the United States Army of date, December 18, 1871, certifies:

FORT WADSWORTH, STATEN ISLAND, N. Y. H.,
December 18, 1871.

I certify that, in the fall of A. D. 1858, I was on duty at Fort Defiance, New Mexico, with General (then Brevet-Major) W. T. H. Brooks, captain in Third United States Infantry, and that I considered it necessary for his health and ultimate recovery to give him a certificate of disability, on which to ground an application for a leave of absence. That I found Major Brooks a great sufferer from an obstinate and very severe organic stricture of the urethra, accompanied by a constant uncontrollable discharge of pus, repeated chills, and great irritability of the bladder. I furthermore certify that the cause was to me unknown. That such cases are not, always, necessarily produced by specific disease, and may have arisen from fatigue of horseback exercise, exposure in the service and in the line of his duty.

J. C. W. McKEE,
Surgeon United States Army.

Dr. Burnett, of date March 29, 1872, certifies:

HUNTSVILLE, ALABAMA, *March 29, 1872.*

I hereby certify that W. T. H. Brooks consulted me in October, 1869, suffering at that time from what I considered chronic cystitis. After further consideration of his case I became satisfied that there was most likely calculus. On attempting to explore the bladder I found an extensive stricture, which he informed me had been once relieved by operation, but from neglect and exposure during the war had returned and at times gave him much trouble and suffering. He proposed himself to dilate, and trusting to his ability to do so, time passed until he was taken about the first of July with acute cystitis, and died from its immediate effect on the night of the 18th of July, 1870.

A. K. BURNETT, M. D.

Subscribed and sworn to before me this 28th day of March, A. D. 1872.

LIONEL W. DAY,
Clerk United States District Court for the Northern District of Alabama.

The Mexican war was finally terminated in 1848. The committee feel constrained, after a full consideration of the foregoing, and of all the evidence before them, to conclude that the statement that the disease described in the certificates of the several surgeons (of which it is claimed General Brooks died) was contracted in the Mexican war, is not sustained; indeed, there is nothing in the papers or proofs to show that General Brooks was in the slightest degree affected or diseased while in the Mexican war, or that any foundation of disease was laid while in that service which connects itself afterward with the diseases

described in either of the surgeons' certificates before us. We are asked to conclude that, because General Brooks entered the service in youth with good health, and served honorably for about thirty years, and finally and probably died of the disease described in the certificate of Dr. Burnett, that therefore he must have contracted such disease at some period of his service, when the bounty of the nation had provided pension-laws for the benefit of those who suffer in the service. It is, however, respectfully submitted, that, under all circumstances, where one has chosen the profession of arms, it must be made to appear plain by those who seek relief and bounty from the Government that the wounds, sickness, disease, or death, upon account of which a pension shall be claimed, occurred at a time covered by the pension-laws of the nation. It would be most injudicious to leave everything to inference and supposition in such cases. From the close of the Mexican war to the commencement of the late rebellion, there was no general pension-law upon the statute books. No law, at least, which would cover the case set out in the petition or attempted to be sustained by the evidence before us. We therefore report adversely and ask to be discharged from the further consideration of the case.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9 1874.—Ordered to be printed.

Mr. PATTERSON submitted the following

REPORT:

[To accompany bill S. 172.]

The Committee on Pensions, to whom was referred the petition of Michael Mc-Grayel, late captain of Company E, Ninety-third Indiana Volunteers, beg leave to make the following report :

This claim was rejected by the Pension Bureau in report made August 12, 1870, by Pension-Surgeon John H. Ford, of Columbus, Ind., that he had treated claimant for attacks of rheumatism, which he considered the result of intemperance.

A special investigation was made January 27, 1873, by the Bureau, and the truth of Dr. Ford's statement was established, and the rejection of the claim affirmed. Although the papers in behalf of the petitioner are very voluminous, yet the evidence of the pension-surgeon is pointed, and your committee do not think it is such a case as would justify Congress in overriding the decision of the Pension Bureau, and therefore report adversely.

REPORT

REPORT

The report of the committee on the subject of the proposed amendment to the constitution of the United States, which was adopted by the House of Representatives on the 12th of January, 1850, is hereby published.

This report was prepared by the committee on the subject of the proposed amendment to the constitution of the United States, which was adopted by the House of Representatives on the 12th of January, 1850.

The committee on the subject of the proposed amendment to the constitution of the United States, which was adopted by the House of Representatives on the 12th of January, 1850, has the honor to report that the proposed amendment is not in accordance with the principles of the constitution, and is therefore rejected.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1874.—Ordered to be printed.

Mr. BOUTWELL submitted the following

REPORT:

The Committee on Commerce, to whom was referred the petition of Rufus Mead, United States consul at San Juan del Sur, praying compensation for services rendered in the absence of C. N. Riotte, minister resident near the government of Nicaragua, do respectfully report:

That, having examined the petition of Mr. Mead, and obtained such information as the files of the Department of State contain in relation to the matter, it is found that Mr. Riotte, the United States minister, was not authorized to present Mr. Mead as chargé d'affaires near the government of Nicaragua, nor was the latter in any way so authorized to discharge diplomatic duties as would entitle him to the compensation provided by law. On the contrary, Mr. Mead, in a dispatch to the Department of State, dated the 29th of May, 1873, having asked if he was to be considered as empowered to perform diplomatic functions, was answered on the 27th of June following that he was to regard himself as the custodian of the archives of the legation only.

No evidence having been presented showing that Mr. Mead was duly authorized to act as chargé d'affaires, or that such services were required of or performed by him, your committee are of the opinion that Mr. Mead is not entitled to payment for his alleged services, and ask to be discharged from the further consideration of his petition.

THE HISTORY OF THE UNITED STATES

OF THE UNITED STATES OF AMERICA

FROM 1776 TO 1875

CHAPTER I

The first chapter of the history of the United States is the story of the discovery of the continent by Christopher Columbus in 1492. This event marked the beginning of European settlement in North America.

The second chapter of the history of the United States is the story of the early years of settlement. This period was characterized by the struggle for survival in a new and often hostile environment. The settlers faced many hardships, but they persevered and eventually established a permanent presence in the continent.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1874.—Ordered to be printed.

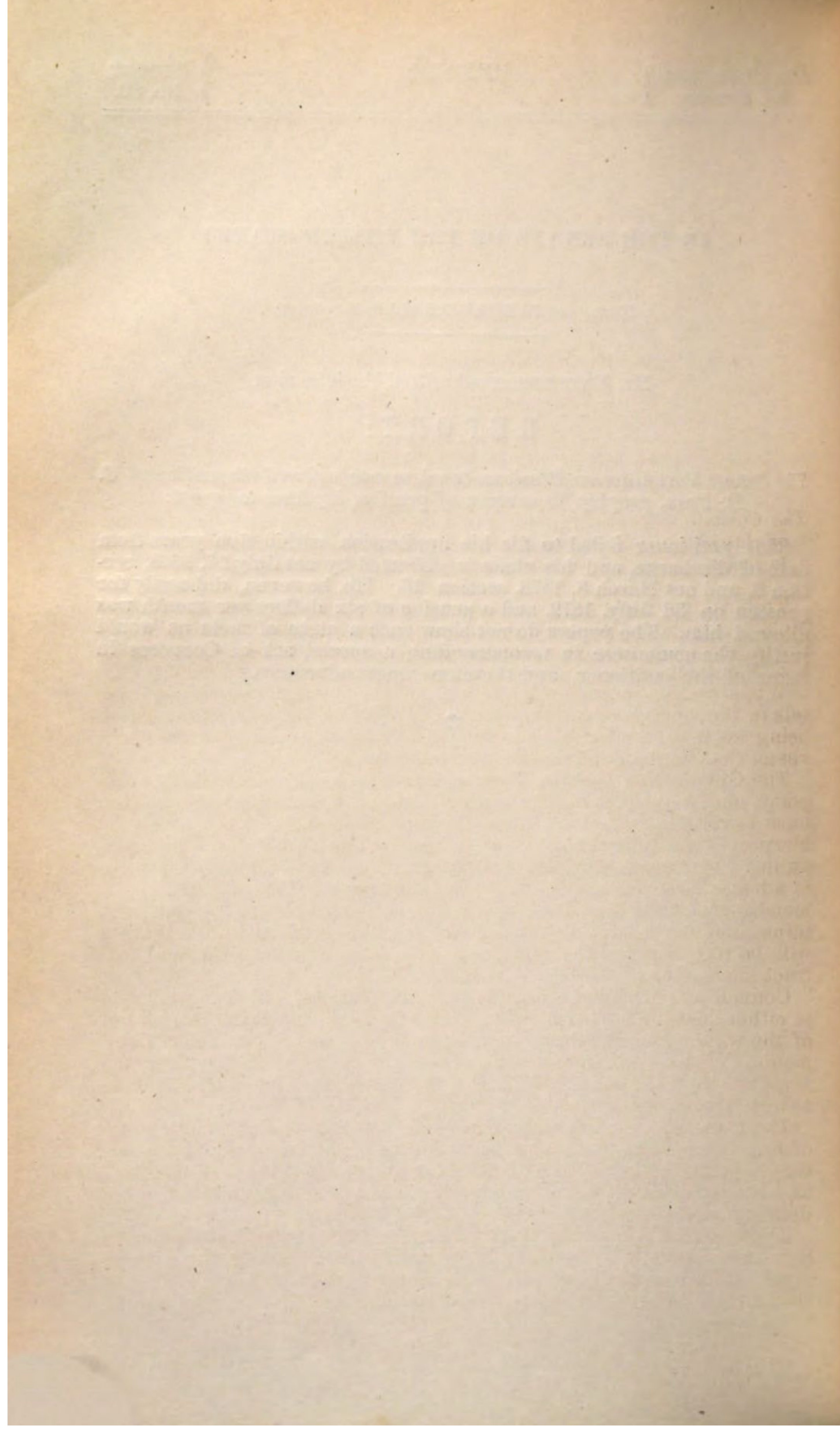
Mr. PATTERSON submitted the following

R E P O R T :

The Senate Committee on Pensions, to whom was referred the petition of C. B. Dean, praying for arrears of pension, beg leave to report :

This petitioner failed to file his application within five years from date of discharge, and his claim is debarred by act July 27, 1868, section 6, and act March 3, 1873, section 15. He, however, did apply for pension on 3d July, 1872, and a pension of six dollars per month was allowed him. The papers do not show such a state of facts as would justify the committee in recommending a special act of Congress in favor of the petitioner, and therefore report adversely.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1874.—Ordered to be printed.

Mr. CRAGIN submitted the following

REPORT:

[To accompany bill S. 465.]

The Committee on Naval Affairs, to whom was referred the memorial of Joseph Council, having had the same under consideration, beg leave to report:

The claimant sets forth in his memorial that he is a resident of Mobile, Ala., and claims \$1,147, for compensation for services rendered the Government in raising, repairing, and delivering the rebel torpedo-boat Saint Patrick to the navy-yard at Pensacola, Fla.

When our forces captured Mobile, the enemy sunk two of their vessels in the vicinity of the ship-yard of Mr. Council, the boat in question being so near it that he was obliged to raise her in order to launch a vessel that he then had on the stocks for repair.

The Government claimed these sunken vessels as United States property, and some time in 1867 entered into an agreement with one Colburn to raise them, on the terms that one of the boats should become his property. This contract was not carried into effect, but became a nullity from inaction on Colburn's part, which fact is clearly set forth in a letter dated January 11, 1867, from Commodore Winslow (then commanding the Gulf squadron) to Mr. Council, extending to him the same terms, and stating that "proposals for wrecking and raising the Bigbee will be received, and that the lowest offer would be accepted and contract made, &c.

Council was not able to raise both of these vessels, but was compelled to either lose the use of his ship-yard or remove the Saint Patrick out of the way. And he affirms that, upon laying these facts before Commodore Winslow, directions were given him to raise and deliver the vessel to the Pensacola yard, and that a reasonable amount would be awarded as compensation.

The claim was filed for adjudication in the Department and a board of appraisers ordered to ascertain the value of the boat; and it appears they reported the same as \$1,000, although the claimant contends that, as a matter of fact, she was worth a much larger sum at the time of her delivery at Pensacola.

The Chief of Bureau of Construction and Repair, after considering this case, reported to the Hon. Secretary of the Navy, on the 11th of April, 1872, that the boat was raised and delivered by Council, and as the cost of raising, &c., was more than the appraised value, recom-

mended the payment of \$1,000, suggesting that the advantage to the claimant of having it removed was well worth to him the difference between amounts claimed for services and the value as above set forth.

Your committee is of the opinion that having faithfully rendered the services to the Government, as stipulated in agreement with Commodore Winslow, that he should receive a *reasonable* compensation, and that the sum recommended by Constructor Hanscom is a *reasonable amount* for the services rendered.

If the Government by one of its officers enters into a contract with a citizen for any specific performance, and then receives the benefit accruing from that contract, (although verbal,) we think it should also be held to its responsibilities.

The committee report the accompanying bill and ask its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Mrs. Annie Dorsey Reeves, praying compensation for the use and occupation of her property in Charleston, S. C., and for damages resulting from such use, submit the following report:

This claim was before this committee in 1872, and at that time (April 24, 1872) they submitted the following report, (Report No. 153:)

The Committee on Claims, to whom was referred the petition of Mrs. Annie Dorsey Reeves, praying compensation for the use and occupation of her property by the Freedmen's Bureau, in Charleston, S. C., having examined the same with accompanying evidence, report as follows:

By the petition this case is made: Petitioner's house in Charleston, S. C., was taken possession of and used by the Freedmen's Bureau from the 16th February until the middle of December, 1865. A fair rent would have been \$300 per annum, its former value. Since its occupation by the Bureau the rent has been diminished to \$240, in consequence of injuries occasioned by such use and occupation.

She prays to be paid for the occupation of the house at the rate of \$300 per annum and \$1,000 for the injuries aforesaid.

The little evidence submitted makes no different case, and indeed hardly sustains that stated by the petitioner.

It will be observed that she fails to state what contract, if any, was made for the rent. There is nothing to show, for here the petition is notably silent, what she was paid, whether \$300 per annum, or more, or less. It is difficult to tell whether she seeks compensation for the injury alone, for the rent, or for the difference between the rental value of the property before and since its occupation. Then no statement is made of the damages, how they affect the general value of the property, but a general claim is set up for \$1,000 damages. In addition to this there is no averment or evidence as to the loyalty of the petitioner during the rebellion.

In any view we feel constrained to reject the claim, and ask to be discharged.

We have now before us a new petition, (not verified,) in which	
there is a claim for the rent of the house for the year 1865....	\$300
And also for the difference between the rental value of the prop-	
erty, before and since its occupation, \$50 per annum for 1865	
to 1874.....	480
	780

It is also stated that there was no contract for the rent, nor was any rent paid.

The only additional paper is the affidavit of R. M. Marshall, of date February 5, 1873, showing the possession of the property, as claimed, by the Freedmen's Bureau; that there was no contract; that the property

was worth \$300 per annum; that its rental value, by reason of injuries received during its use, has been diminished \$60 for each year, and that it is now unfit for private occupation.

In this state of the record, we need only repeat what was said in the former report, and particularly advert to the most significant fact that there is still an entire want of evidence as to petitioner's loyalty.

We can therefore only again recommend that the claim be rejected and the committee discharged.

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REPORT

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1874.—Ordered to be printed.

Mr. BOREMAN submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Clement Wetle, of Saint Cloud, Minn., praying compensation for losses sustained at the hands of the Sioux Indians, in June, 1861, have had the same under consideration, and respectfully submit the following report :

The claimant shows that in April, 1861, he and two other persons located themselves in an unsettled region of country on the southwest shore of Ashley Lake, Pope County, Minnesota, about 70 miles from Saint Cloud, under the pre-emption law ; that he took with him some personal property, and among other things the Durham cow hereinafter referred to ; that he got together a portion of the materials for building a house and cleared up a few acres of land, and planted some three acres in potatoes ; that on the 4th of June, 1861, a band of about one hundred Sioux Indians, under " Little Crow," then engaged in hostilities with the Chippewas, came into the neighborhood, and a portion of them came to the residence of claimant, and, against his consent, drove off his said cow to their camp, about two miles distant, and " killed her and used her meat ;" that the cow was worth \$75 ; that " they came into his house and took and carried off provisions, and brandished their weapons and manifested so much hostility in various ways as to lead him to feel that his life would be in danger if he continued longer to reside in that vicinity ;" that he thereupon, about June 4, 1861, abandoned his settlement and improvement, and moved to Saint Cloud, and of course was obliged to abandon his said three acres of potatoes, which would have yielded one hundred bushels to the acre ; and that potatoes were worth, in money, at the least, seventy-five cents per bushel. This is claimant's statement under oath, which is supported by the affidavit of one other witness, who lived near him, and removed with him to Saint Cloud.

There could be no pretense of obligation on the United States to pay for depredations of the Indians, were it not for the legislation of Congress on the subject ; and of course any one setting up a claim to indemnity under such voluntary obligations, must bring himself within such legislation and the conditions therein prescribed.

This claim is, no doubt, intended to be preferred under section 17, act of June 30, 1834, (4 Stat. at Large, p. 731,) providing redress when Indians shall pass from the Indian country into a State or Territory, and there " take, steal, or destroy" property belonging to any citizen or inhabitant, if such citizen or inhabitant shall pursue the course there prescribed ; which is by applying " to the proper superintendent, agent, or sub-agent, and furnishing him with the necessary documents and proofs ;" who thereupon, under direction of the President, is required to make demand of the nation or tribe to which such Indians belong, for satisfaction.

This application by the claimant to the superintendent or agent is required by the same section of the law to be made *within three years*. This limitation is prescribed, no doubt, so that the Government may secure reimbursement from the Indians while the transaction is susceptible of easy proof and can be brought home to the perpetrators of the injury. In a case covered by this statute, and where its requirements have been pursued, the "United States guarantee, to the party injured, an eventual indemnification."

Claimant's loss, if any, on account of his potatoes is not covered by this statute. After they had been planted a few days claimant abandoned them, and so far as appears, the Indians did not "take, steal, or destroy" any of them at all. Yet claimant asks to be paid for his prospective crop at the rate of seventy-five cents per bushel for the three hundred bushels to be grown on three acres of land. There is not the shadow of a claim for redress on this account.

If there ever was any ground for claiming compensation for claimant's cow, he has failed to pursue the course prescribed by the statute so as to enable the Government to make itself whole out of any annuity due the depredating Indians. True, he says that on the 13th of June, 1861, at Saint Cloud, he made "affidavit to the loss of the cow," and through his attorney "sent it to Joseph R. Brown, agent for the Sioux Indians, in the hope of getting pay out of the annuities of said Indians, but nothing was ever paid;" nor does it appear that even this affidavit ever reached the agent.

This does not approach compliance with the law, which requires that the superintendent or agent be "furnished with the necessary documents and proofs" within three years after the commission of the injury, otherwise "the same shall be barred." Claimant seems to have taken no further action in the matter until 1867, when he presented his claim to the Interior Department, where it was rejected, the Secretary referring to the fact that by the act of July 16, 1863, the treaties with the Indians mentioned had, in consequence of hostile acts, been abrogated, and their annuities forfeited. There was no recognition of the claim, as the reference to the statute was sufficient to relieve the Department of its consideration.

But if there were any merit in claimant's case, it is transferred, in the opinion of the committee, to the jurisdiction of the Secretary of the Interior, under the provisions of section 7 of an act of Congress approved May 29, 1872. See 17 Stat. at Large, p. 190, which reads as follows:

"SEC. 7. That it shall be the duty of the Secretary of the Interior to prepare and cause to be published such rules and regulations as he may deem necessary or proper, prescribing the manner of presenting claims arising under existing laws or treaty stipulations, for compensation for depredations committed by the Indians, and the degree and character of the evidence to support such claims; he shall carefully investigate all such claims as may be presented, subject to the rules and regulations prepared by him, and report to Congress, at each session thereof, the nature, character, and amount of such claims, whether allowed by him or not, and the evidence upon which his action is based: *Provided*, That no payment on account of said claim shall be made without a specific appropriation therefor by Congress."

Your committee being of the opinion, therefore, that claimant is not entitled to relief on account of the matters set forth in his petition, report the same back to the Senate, and ask to be discharged from the further consideration thereof.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1874.—Ordered to be printed.

Mr. BOREMAN submitted the following

R E P O R T :

The Committee on Claims, to which was referred the petition of William Mason, of Taunton, Massachusetts, praying an appropriation for the amount of damages sustained by him by reason of breach of contract made with him by the United States in January, 1862, for the manufacture of arms, have had the same under consideration and respectfully submit the following report :

It appears that petitioner has prosecuted a suit against the United States in the Court of Claims for the claim now set up in his petition, in which he asked judgment for \$500,000; and on the hearing that court decided against him. He thereupon appealed to the Supreme Court, where the adverse judgment of the Court of Claims was affirmed. He now comes to Congress for relief, alleging that he has suffered injury and injustice at the hands of the Government, which the courts have failed to redress.

The history of the case is as follows:

Claimant was engaged in manufacturing cotton machinery and locomotives, at Taunton, Massachusetts, when, in the month of January, 1862, the Secretary of War, Mr. Cameron, made the following order:

WAR DEPARTMENT,
Washington, January 6, 1862.

Please make order in favor of William Mason, of Taunton, Massachusetts, for 50,000 Springfield rifled muskets, on the same terms and deliveries as set forth in recent contracts for like numbers. Mr. Mason has an extensive establishment devoted to machine purposes, which he proposes to convert into an armory, and believes he can deliver 100,000 stand of arms within the usual time fixed for delivery of 50,000. As we shall need the 100,000 guns, they may be received, if manufactured by him at his own establishment in Taunton, thus securing an efficient armory to furnish arms for the Government.

By order of the Secretary.
Respectfully, &c.,

THOMAS A. SCOTT,
Assistant Secretary.

General RIPLEY,
Chief of Ordnance.

On the next day the Chief of Ordnance, General Ripley, made the following offer to Mr. Mason:

ORDNANCE OFFICE,
Washington, January 7, 1862.

SIR: By direction of the Secretary of War, I offer you an order for fifty thousand (50,000) muskets, with appendages, of the Springfield pattern, on the following terms

and conditions, viz: These arms to be forwarded, with regular appendages, and are to be in all respects identical with the standard rifle-musket made at the United States Armory at Springfield, Massachusetts, and are to interchange with it and with each other in all their parts. They are to be subject to inspection by United States inspectors, in the same manner that the Springfield arms are inspected, and none are to be received or paid for but such as pass inspection, and are approved by the United States inspectors. These fifty thousand (50,000) arms and appendages are to be delivered at your armory as follows, viz: Not less than one thousand (1,000) in each of the months of July, August, and September, 1862; not less than two thousand (2,000) in each of the months of October and November, 1862; not less than three thousand (3,000) in December, 1862; and not less than four thousand (4,000) per month thereafter, until the entire fifty thousand shall have been delivered; and you are to have the right to deliver more rapidly than according to the number of arms here specified, if you can do so. In the case of any failure to make deliveries to the extent and at the times before specified, you are to forfeit the right to deliver whatever number may be found deficient for the month in which the failure occurs. All arms and appendages are to be delivered by you, and this order, if transferred to another party, is to be thereby forfeited. Payments are to be made in such funds as the Treasury Department may provide for each delivery, on certificates of inspection and receipt by the United States inspectors, at the rate of twenty dollars (\$20) for each arm, including appendages. All these arms and appendages are to be packed by you in cases of the regular pattern, with twenty (20) muskets and appendages in each box, for which a fair price, to be determined by the inspector, will be allowed.

Please signify, in writing, your acceptance or non-acceptance of this order, on the terms and conditions before stated herein.

Respectfully, your obedient servant,

JAMES W. RIPLEY,
Brigadier-General.

P. S.—It is further directed by the War Department that double the number of arms and appendages, viz, one hundred thousand, will be received, if manufactured at your own establishment in Taunton, Massachusetts, and delivered within the times before specified for the delivery of fifty thousand arms and appendages, all the other terms and conditions of this order remaining unchanged for the additional fifty thousand.

JAMES W. RIPLEY,
Brigadier-General.

WILLIAM MASON,
Taunton, Massachusetts.

This proposition came from the United States unsolicited by claimant, and on the 20th of January he accepted the same, as follows:

TAUNTON, *January 20, 1862.*

SIR: I have the honor to acknowledge the receipt of your order for muskets, dated January 7, 1862. In reply, I accept the order, and hope to be able to execute it so much to your satisfaction as to merit a more extensive contract.

I am, sir, respectfully, your obedient servant,

WILLIAM MASON.

General JAMES W. RIPLEY,
Ordinance Office, Washington, D. C.

This letter of acceptance was duly received by General Ripley, Chief of Ordnance, and claimant immediately proceeded to make changes of machinery in his machine-works, and to provide materials with a view to the performance of the agreement above set forth; and he could, no doubt, have performed according to the terms of said agreement. He expended in proceeding to make the changes in his machine-works the sum of seventy-five thousand dollars, (\$75,000,) and in the purchase of material about five hundred thousand dollars, (\$500,000.) And, as may be hereinafter seen, the Court of Claims find that the profits which he would have made upon the muskets ordered, if he had been allowed to perform his contract, would have amounted to \$5.25 per musket.

In January, 1862, a few days after claimant signified his acceptance of the proposition for the manufacture of arms, Mr. Cameron resigned

his position as Secretary of War, and Mr. Stanton was appointed to that office.

On the 13th of March, 1862, the Secretary of War issued the following order :

WAR DEPARTMENT,
Washington City, D. C., March 13, 1862.

Ordered, That the honorable Joseph Holt and the honorable Robert Dale Owen be, and they are hereby, appointed a special commission to audit and adjust all contracts, orders, and claims on the War Department in respect to ordnance, arms, and ammunition, their decision to be final and conclusive, as respects this Department, on all questions touching the validity, execution, and sums due or to become due upon such contracts, and upon all other questions arising between the contractors and the Government upon such contracts.

2d. The said commission will proceed forthwith to investigate all claims and contracts in respect to ordnance, arms, and ammunition in the War Department, or pending settlement and final payment, and adjudicate the same. All persons interested in such contracts may appear in person, but not by attorney, before said commissioners, and be heard respecting their claims at such time and place as the commissioners shall appoint.

The Chief of Ordnance, and all other officers in the Department, will furnish such books and papers as the commissioners may require.

Major Hagner, of the Ordnance Department, is specially assigned to aid and assist the commissioners in their investigations. All claims that they award in favor of shall be promptly paid. No application will be entertained by the Department respecting any claim or contract which they shall adjudge to be invalid.

3d. If, in their investigations, they shall find reason to believe that any agent or employé of the War Department was, directly or indirectly, interested in any contract for ordnance, arms, or ammunition, or received any consideration for its procurement, they shall give notice thereof to the claimant, and proceed to investigate and determine the fact, taking such testimony as they may deem proper ; and, if the fact of such interest be established, it shall be good ground for adjudging the claim to be fraudulent.

EDWIN M. STANTON,
Secretary of War.

It appears that on the 4th of April, 1862, claimant appeared before the said commission and made a statement of his case. On the 15th day of May, 1862, however, the commission, without the consent and against the remonstrances of the claimant, decided and reported to the Chief of Ordnance as follows :

It is therefore decided that the order to Mr. Mason be confirmed, subject to all its terms, to the extent of 30,000 muskets, upon condition that he shall, within fifteen days after notice of this decision, execute bond, with good and sufficient securities, in the form and with the stipulations prescribed by law and the regulations, for the performance of the contract as thus modified, resulting from said order and acceptance ; and, upon his failure or refusal to execute such bond, then the said order shall be declared annulled and of no effect.

This decision having been communicated to the claimant, he, by letter addressed to the commissioners, dated May 28, 1862, made objection to it, and asked a revision of the award, stating that he was willing to have his order reduced to 75,000 muskets. This was considered by the commissioners, and on the 10th day of June, 1862, they "decided that the number of arms assigned to Mr. Mason is as large as the commission think it proper at this time to assign to one contractor at the price of \$20."

Meantime, on the 30th of May, 1862, the Chief of Ordnance transmitted a copy of the foregoing decision of the 15th of May to the claimant, and also the contract and bond contemplated by the commission in its decision, with the request that the claimant would execute and file them within fifteen days after their receipt by him, if he should "accept the order as confirmed by the commission." The claimant thereupon executed such written contract on the 25th day of June,

1862, whereby he contracted and engaged to furnish to the United States 30,000 muskets of the Springfield pattern. This contract was performed *by both the parties*; and no other muskets were ever furnished by claimant to the Government.

The claimant's case came on for hearing before the Court of Claims at the December term, 1870, when judgment was rendered against him, and his petition was dismissed; and that court, upon the proofs and evidence, make and determine the following findings of fact and conclusions of law:

I. The defendants (the United States) on the 7th of January, 1862, through their Chief of Ordnance, General James W. Ripley, and by express direction of the Secretary of War, made in writing this offer to the claimant, to wit:

"I offer you an order for fifty thousand (50,000) muskets, with appendages, of the Springfield pattern, on the following terms and conditions, viz: These arms are to be forwarded, with the regular appendages, and are to be in all respects identical with the standard rifle-musket made at the United States armory at Springfield, Mass., and are to interchange with it and with each other, in all their parts. They are to be subject to inspection by the United States inspectors, in the same manner that Springfield arms are inspected, and none are to be received or paid for but such as pass inspection and are approved by the United States inspectors. These fifty thousand (50,000) arms and appendages are to be delivered at your armory as follows, viz: Not less than one thousand (1,000) in each of the months of July, August, and September, 1862; not less than two thousand (2,000) in each of the months of October and November, 1862; not less than three thousand (3,000) in December, 1862; and not less than four thousand (4,000) per month thereafter, until the entire fifty thousand shall have been delivered; and you are to have the right to deliver more rapidly than according to the number of arms before specified, if you can do so. In the case of any failure to make deliveries to the extent and at the times before specified, you are to forfeit the right to deliver whatever number may be found deficient for the month in which the failure occurs. All the arms and appendages are to be delivered by you; and this order, if transferred to another party, is to be thereby forfeited. Payments are to be made in such funds as the Treasury Department may provide, for each delivery, on certificates of inspection and receipt by the United States inspectors, at the rate of twenty dollars (\$20) for each arm, including appendages. All these arms and appendages are to be packed by you in cases of the regular pattern, with twenty (20) muskets and appendages in each box, for which a fair price, to be determined by the inspector, will be allowed.

"It is further directed by the War Department that double the number of arms and appendages, viz, one hundred thousand, (100,000,) will be received, if manufactured at your establishment in Taunton, Mass., and delivered within the times before specified for the delivery of the fifty thousand (50,000) arms and appendages; all the other terms and conditions of this order remaining unchanged for the additional 50,000."

On the 20th of January, 1862, the claimant, in writing, duly accepted the foregoing order, and his acceptance thereof was duly received by the defendants' (United States) Chief of Ordnance.

II. The claimant immediately proceeded to make changes of machinery in his machine-works, and do whatever was necessary to insure the full and complete performance of the agreement set forth in the first finding of fact; and the claimant was able and willing to perform according to the terms of his agreement. His expenditure for changing his machine-works [to] an armory, as required by the agreement, amounted to seventy-five thousand dollars, (\$75,000,) and the profits which he would have made upon the muskets ordered, if he had been allowed to perform, would have amounted to \$5.25 per musket.

III. On the 13th March, 1862, the Secretary of War, by an order of the War Department—

"Ordered, That the honorable Joseph Holt and the honorable Robert Dale Owen be, and they are hereby, appointed a special commission to audit and adjust all contracts, orders, and claims on the War Department in respect to ordnance, arms, and ammunition, their decision to be final and conclusive as respects this Department on all questions touching the validity, execution, and sums due or to become due upon such contracts, and upon all other questions arising between contractors and the Government upon such contracts.

"2d. The said commission will proceed forthwith to investigate all claims and contracts in respect to ordnance, arms, and ammunition in the War Department, or pending settlement and final payment, and adjudicate the same. All persons interested in such contracts may appear in person, but not by attorney, before said commission, and be heard respecting their claims, at such time and place as the commissioners may appoint. The Chief of Ordnance, and all other officers in the Department, will furnish

such books and papers as the commissioners may require. Major Hagner, of the Ordnance Department, is specially assigned to aid and assist the commissioners in their investigations. All claims that they may award in favor of shall be promptly paid. No application will be entertained by the Department respecting any claim or contract which they shall adjudge to be invalid.

"3d. If, in the investigation, they shall find reason to believe that any agent or employé of the War Department was, directly or indirectly, interested in any contract for ordnance, arms, or ammunition, or received any consideration for its procurement, they shall give notice thereof to the claimant, and proceed to investigate and determine the fact, taking testimony as they may deem proper; and if the fact of such interest be established, it shall be good cause for adjudging the claim to be fraudulent."

On the 15th of May, 1862, the Holt-Owen commission, without the consent, and against the remonstrances of the claimant, decided and reported to the Chief of Ordnance—

"That the order to Mr. Mason be confirmed, subject to all its terms, to the extent of thirty thousand muskets, upon condition that he shall, within fifteen days after notice of this decision, execute bond, with good and sufficient sureties, in the form and with the stipulations prescribed by law and the regulations, for the performance of the contract, as thus modified, resulting from said order and acceptance; and, upon his failure or refusal to execute such bond, then the said order shall be declared annulled and of no effect."

On the 30th of May, 1862, the Chief of Ordnance transmitted a copy of the foregoing decision to the claimant, and also the contract and bond contemplated by the commission in its decision, with the request that the claimant would execute and file them within fifteen days after their receipt by him, if he should "accept the order as confirmed by the commission." The claimant, therefore, executed such written contract on the 25th day of June, 1862, whereby he contracted and engaged to furnish to the defendants (the United States) thirty thousand muskets of the Springfield pattern. This contract was performed by both parties, and no other muskets were ever furnished by the claimants to the defendants.

And upon the facts aforesaid the Court of Claims, as a conclusion of law, decides:

That the original contract between the parties for the purchase and sale of one hundred thousand Springfield muskets, was changed and modified by the voluntary act of the parties in the written contract, June 25, 1862, and that the petition of the claimant should be dismissed.

The Court of Claims, in delivering its opinion in the case, says:

The contract was wholly unperformed on the part of the claimant. The defendants, through the Holt-Owen commission, proposed to the claimant one of two things: that it should be mutually "modified," or that it should be by them declared annulled. If the contract was valid, the commission had no power to annul it, and the claimant might have stood upon his legal rights and have recovered the full measure of his legal redress, as did the claimant in the Stevens case, (2 C. Cls. R., p. 95.)

Instead of so doing, the claimant elected to accept the alternative and modify the agreement.

The modified agreement has been acted upon and executed by both parties. The defendants did not annul the original agreement; they merely gave notice that they would do so in a certain contingency. The contingency never happened, and its happening the claimant himself prevented. The original agreement was never, in fact, violated by the one party nor performed by the other.

The case at bar is a "hard case," and the court reaches its conclusion with lingering regret. The claimant made great expenditures on the faith of an agreement with his Government, and at a time when it was believed that his expenditures would redound greatly to his country's good. The work which he did was well and honestly done; the losses which he suffered remain wholly unrequited; the officers of the Government induced him to enter into the agreement, and the officers of the Government prevented its performance. The contract was not of his seeking, and the losses under it are not to be ascribed to his fault; yet it is a case where the claimant's own act precludes a further consideration of the merits.

The Supreme Court, at the December term, 1872, (not yet reported,) affirmed the decree of the Court of Claims, and in the opinion delivered in the case, says:

Much discussion in the case is unnecessary, as it is as clear as a proposition of fact well can be, that the claimant voluntarily accepted the modification of the contract as suggested by the commissioners, and that he executed the new contract in its place, which he must have understood was intended to define the obligations of both parties. His counsel suggest that he accepted the new contract without relinquishing his claim for damages, arising from the refusal of the United States to allow him the whole 100,000 muskets, but the court is unable to adopt that theory, as it is quite clear that

he could not have acted with any such motives consistent with good faith toward the War Department, as he must have known that the Chief of Ordnance supposed that when he, the claimant, returned the written contract duly executed, that the whole matter in difference was adjusted to the satisfaction of all concerned.

The Chief Justice dissented from this opinion of the Supreme Court.

While it may be that claimant has suffered some loss by reason of not being allowed to perform his original contract for furnishing the 100,000 guns, yet what that loss is nowhere appears in the case as presented. It appears that he expended \$75,000 in purchasing and making machinery, yet one of his own witnesses (William B. Bement) testifies that his estimate in 1862, "for machinery for the manufacture of 30,000 guns, including steam-power, shafting, and everything except the building, amounted to \$325,370. The same witness further says "I also made an estimate for 60,000 guns, that amounted to about \$500,000."

Another of his witnesses, William H. Bent, says: "After the rescinding of the contract for 100,000 muskets and the signing of the contract for 30,000 guns, Mr. Mason did not prosecute his original intention for making a complete armory." So it would seem that claimant had not completed his machinery with capacity sufficient to comply with the original contract at the time of its modification, and possibly his expenditure of the \$75,000 did not supply more machinery than was necessary to enable him to manufacture the 30,000 guns according to his modified contract.

It appears that he expended \$500,000 in the purchase of material for the manufacture of the guns under the original contract, but it does not appear that this would have been all the material required to manufacture the guns under that contract. And, again, much of this material must have been consumed in the manufacture of the 30,000 guns, but how much was so consumed does not appear. There is no evidence in the case to show how much, if anything, was lost on either the machinery or the material, nor is there any data from which even an estimate can be made. It is true that the Court of Claims finds that "the profits which he (claimant) would have made upon the muskets ordered, if he had been allowed to perform, would have amounted to \$5.25 per musket," but this does not show the actual loss he sustained, nor is it in this case to be regarded as the measure of damages, for it appears from the evidence that he *did not* manufacture any guns in excess of the number required to comply with the modified contract. He did not provide the material or machinery necessary to a full compliance with his contract for the manufacture of the 100,000 guns, nor did he employ and pay the labor necessary to their manufacture, and certainly he should not receive a profit on capital never invested in such labor, machinery, and material.

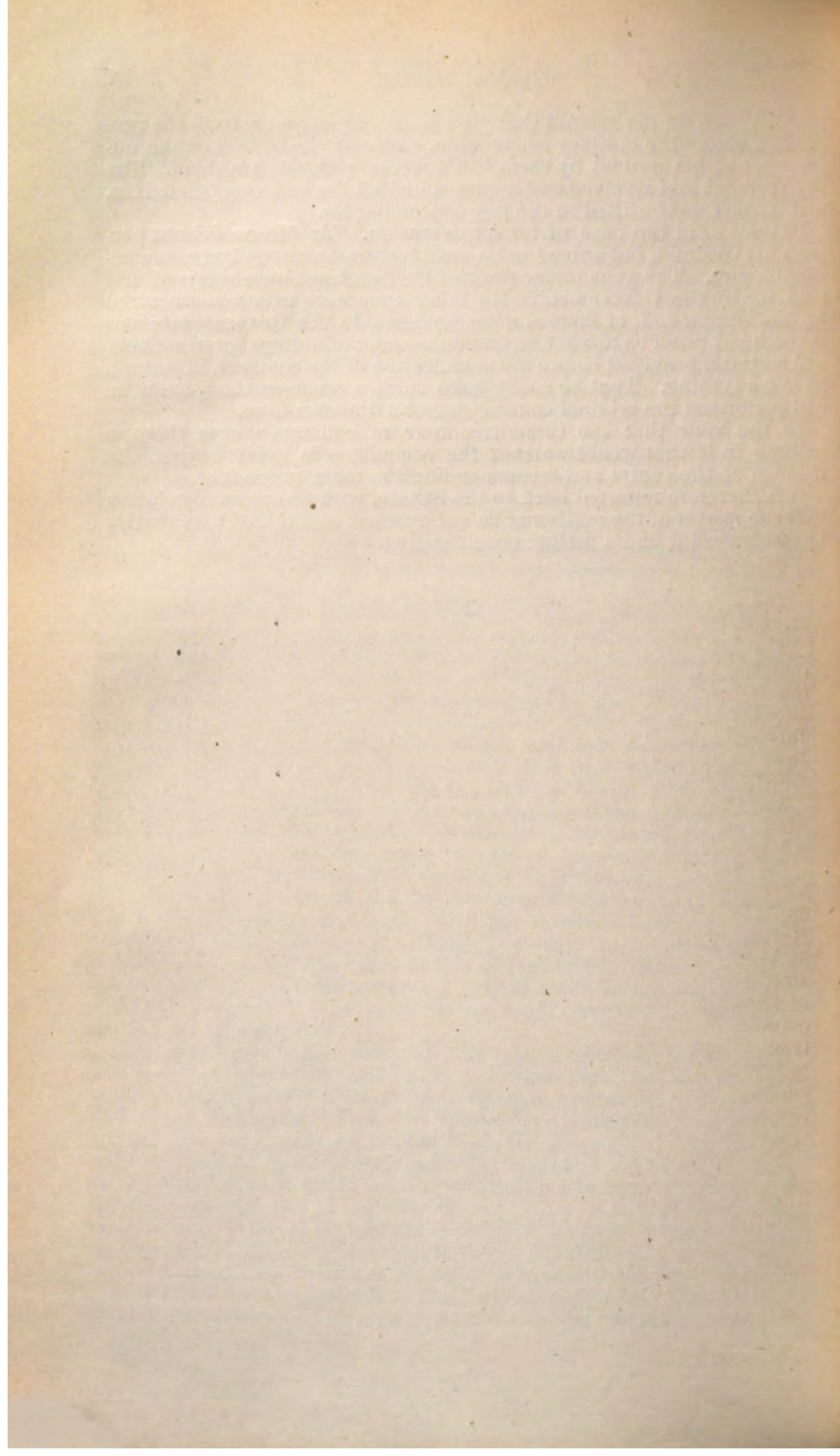
Claimant refers in his petition to the case of Theodore Adams, which was finally and favorably acted upon at the last Congress, as a precedent to show that Congress then granted relief in opposition to the adverse decision of the courts. But that case differs materially from this one. In that case there was no dispute that Mr. Adams had fully complied with his contract to build certain mortar-boats and tug-boats, to be used on the Mississippi River in the late war, which had been accepted by the Government and put to the use designed. And a military commission undertook to say that he was not entitled to the price originally agreed on, but should receive a less sum in full of his demand; which sum he received sheerly on account of his extreme necessities, but protesting at the time that he was entitled to the full contract-price. The Court of Claims decided in his favor, and its decision was reversed by the Su-

preme Court, on the ground that "he made himself a party to the proceeding before the military commission, and took the benefit of the adjustment of his account by them." Congress granted him relief. The Government had received and appropriated *all* the boats contracted for, and Adams was entitled to the pay contracted for.

But not so in the case under consideration. Mr. Mason did not perform his contract, but agreed to its modification before he had manufactured a gun. The guns under the modified contract were received and paid for by the Government. No other guns were ever manufactured by Mr. Mason, and, of course, none tendered to the Government; nor is there any proof as to what he lost on account of outlays for machinery and material provided before the modification of the contract, if, indeed, he lost anything. That he could have made a profit on the guns if he had performed the original contract is not a question here.

In the view that the committee take of claimant's case, there is nothing in it that would warrant the committee in going beyond the decision of the courts and recommending the relief prayed for.

It is therefore reported back to the Senate, with the recommendation that the prayer of the petitioner be not granted, and that the committee be discharged from its further consideration.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill S. 185.]

The Committee on Claims, to whom was referred the bill (S. No. 185) for the relief of M. S. Hellman, of Canyon City, Oreg., submit the following report :

The memorial and evidence accompanying the bill tend to establish the following state of facts :

The letter of the Secretary of War, dated December 9, 1873, shows that Mr. Hellman had contracts with the Subsistence Department for the delivery of hay and flour at Camps Harney and Warner as follows: July 5, 1871, for the delivery of 51,000 pounds of flour at Camp Warner; July 5, 1871, for the delivery of 27,000 pounds of flour at Camp Harney; June 22, 1871, for the delivery of 250 tons of hay at Camp Harney; June 4, 1873, for the delivery of 72,982 pounds of flour at Camp Harney.

The contracts themselves are not in evidence. The letter above is silent as to the price and time of delivery and other conditions of the contracts.

But Mr. Hellman, in his memorial, (which is not sworn to,) says that he had a contract with the Quartermaster's Department, of date of May 23, 1871, for the delivery of about 800,000 pounds of grain at Camp Harney, which was faithfully performed, and on which there is due him \$5,542.50 in coin, which the Department withholds, for reasons hereinafter given; that the contract of July 5, 1871, to deliver 27,000 pounds of flour at Camp Harney, was also performed to the extent of 10,000 pounds, when he was notified no more was required, and on which contract there is due him \$550.72 in currency, which the Commissary Department refuses to pay; that on the 5th of July, 1871, still another contract was made with this Department for the delivery of 51,000 pounds of flour at Camp Warner, the agreed price in the two last contracts being \$5.47 per 100 pounds, payable in currency.

The military headquarters at the time these contracts were made was at Portland, in Oregon, the memorialist living, however, about four hundred miles distant; at Canyon City, to reach which point some two hundred miles of mountain-road had to be traveled by stage-coach. Canyon City is in Eastern Oregon, and in order to fulfill his contract he had to return home, and, we infer, procure in that neighborhood the flour to fill his contract. As he was about leaving, he was thrown from a buggy, and received such injuries in his right side and shoulder as to

disable him from travel and from giving his personal attention to business for nearly three months, and the summer months were nearly over when he reached home. He alleges that he immediately commenced delivering grain at Camp Harney under his quartermaster's contract, and as the season was then late, and transportation scarce in that part of the country, he had to use all the teams he could procure—some of them ox-teams—to haul the grain, the distance in some cases being one hundred miles. Before the grain was all delivered at this post, the winter, which proved to be the severest one known for many years in that region, had set in. He alleges that he used every reasonable inducement to get some of the same teams that had hauled the grain to Harney to go to Camp Warner with the flour, but they refused to go, for fear of being snowed in, although he had the flour at Canyon City; and so he was wholly unable to procure transportation. The memorialist then proceeded by way of Portland to San Francisco, a distance of one thousand miles and more, in the hope of being able to ship a portion, at least, of the flour through to Warner from that point, but failed in his mission. When he returned to Portland he was informed that orders had been received by the officers in command at Camp Warner for the purchase of 40,000 pounds of flour at private sale, which amount was already purchased and delivered at that post, at $16\frac{2}{3}$ cents per pound in coin. He says that, notwithstanding he knew of these orders, he visited Nevada and made arrangements there to deliver a full supply of flour in the spring, via Camp Bidwell, but, in communicating with the Department, learned that the 40,000 pounds contracted for would supply the post until the next year's contract could be made, and that no more flour was needed. Therefore he annulled the arrangements he made in that State. In all these efforts to comply with his contract he spent, as he says, over \$1,000 in gold coin.

And now comes the grievance of which he complains. The Quartermaster's Department withholds from him the \$5,442.55 gold coin due for the grain delivered at Camp Harney, and the Commissary Department likewise withholds the \$550.72 currency due him for flour delivered at the same camp, and both of these detentions are made in order to re-imburse the Commissary Department for the difference in the purchase-price of the 40,000 pounds of flour at $16\frac{2}{3}$ cents per pound, gold coin, and the contract price with him for a larger quantity of flour at \$5.47 per 100 pounds, currency. The amounts thus detained exceed by a small amount the damages recouped, as he alleges, and the Department refuses to pay except upon the condition that he will receipt in full for the whole amount, which he declines to do.

He complains that the 40,000 pounds purchased in derogation of his rights was an improvident one, as it was enough for a full year's supply, and that the price paid therefor was exorbitant and the rate unheard of in that country. In proof of this he says that flour was furnished at the same post the following year at 6 cents per pound, in currency. He estimates that ten or twelve thousand pounds of flour would have subsisted the troops at Camp Warner until the spring opened, when he could have complied with his contract.

Omitting the argument, the above is the substance of the memorial of Mr. Hellman. The proofs he submits relate mostly to his good and prompt business character; the severity of the winter, and the early day it set in; the difficulty of obtaining transportation so late in the season; the extra price offered to teamsters; the possession by him of the requisite flour, and his inability, on account of the injuries received in being thrown from the buggy, to enter upon the work of fulfilling

his contract at an earlier day. There is also some testimony tending to throw suspicion upon the contract made for the delivery of the 40,000 pounds of flour, at the rate of 16 $\frac{2}{3}$ cents per pound, as that it was extravagant in price, too great in amount, and the packing done upon Government mules and by men in Government employ, without any return being made to the Government for the services of the men and mules.

The account made at the office of the chief commissary of subsistence, Department of Columbia, on July 19, 1872, of the damages sustained by the United States on account of Mr. Hellman's failure to comply with his contract is as follows:

Dr.	
M. S. Hellman to the United States,	
For 40,000 lbs. flour at 16 $\frac{2}{3}$ cents per lb.....	\$6,666 67
Legal tenders at date of payment, value at 88 cents.....	7,575 76
Cr.	
By 40,000 lbs. flour at 5.47 cents per lb. currency, charged contract price.....	\$2,188 00
Amount of vouchers for flour delivered at Camp Harney.....	550 72
	2,738 72
Balance due the Subsistence Department.....	4,837 04

The chief commissary requests that this amount be withheld from any money due Mr. Hellman on completed contracts with the Quartermaster's Department, and that the Quartermaster-General, U. S. A., transfer to the Subsistence Department the said sum of \$4,837.04. This was done, it seems, by order of General Canby on the 24th of August, 1872.

There is no complaint made that the United States are not ready and willing to pay the memorialist the difference between the amount due him for the grain delivered at Fort Harney after deducting the above \$4,837.04 recouped by way of damages for the non-fulfillment of the last flour contract.

The question referred to the committee on this statement of facts is, What is the measure of Mr. Hellman's relief, if, indeed, he is entitled to any?

At law, it is plain, he is not entitled to any on his own showing. He has broken his contract, and the amount of his pay withheld is the amount of the Government's loss, or nearly so.

We are without any information as to the terms of that contract as to the time when the flour was to be delivered. We have a right to infer, however, it was deliverable before winter set in. There is no proof upon the point that flour was not needed at the fort when the new contract for 40,000 pounds was made. We must presume that it would not have been contracted for if not needed then; nor, upon *ex parte* evidence, would it be safe to assume that the quantity contracted for was in excess of the amount needed. Nor do we know that the flour could have been obtained at that isolated place, when winter was about setting in, at a less price, extravagant as it seems to us to be. But the perils staring the officers in command in the face, must have been great when Mr. Hellman, by his own confession, was unable to obtain transportation at any reasonable price.

There are two strong points against the claimant's case in this: The flour under the new contract *was* transported. If the new contractor could procure mules to do the packing, why could not Mr. Hellman? And then, again, does he offer sufficient excuse for delaying three months

to enter upon his contract—that period of the year, too, when transportation was entirely practicable. True he was disabled, unable to get about at all for three weeks, he says, and unable to travel by stage-coach for two months after that. But then, by his own showing, he was a man of substance, of high business standing, accustomed to contracts of this character, having the flour on hand at Canyon City, his place of residence, to supply the amount due. Why did he fail to write home or send an agent from Portland to attend to this business for him? His personal presence was not absolutely essential. A trusted agent could have accomplished the delivery of this flour during the three months he was lying wholly idle at Portland. He has furnished us no explanation of this difficulty in the case. He was not helpless to act, though we concede him too disabled to travel. Because of his default the fort was supplied by other hands—not with the 51,000 pounds flour he had contracted to deliver, but with 11,000 pounds less. It does not lie in his mouth to complain that this was in excess of what was needed during that fiscal or contract year, when he confesses that he engaged in good faith to deliver 11,000 pounds more.

It seems to the committee, then, that there was an entire failure on Mr. Hellman's part to comply with his contract. In our view it was not an excusable failure; but whether excusable or not, the injury to the United States is the same. They have in fact paid in coin, in consequence of this default, a higher rate per pound by 11 cents than they agreed to pay him in currency. Congress is asked to remit this entire sum, and account with Mr. Hellman as though he had never made and violated the contract.

We have not the means, nor would it be profitable if we had, to investigate the integrity of the transaction which Mr. Hellman inveighs against. The charge of corruption is sustained by a single witness, who claims to have been stationed at the fort (in what capacity is not shown) at the time the flour was transported there upon the backs of Government mules. We know nothing of the character of the witness or his claim to credit. It is enough to know that if it be all true, as charged by him and the memorialist, it does not make out a case for Mr. Hellman. His proof shows that he was unable to deliver the flour until the spring of 1872, although his contract bore date July 5, 1871. The very evidence he furnishes of the length and severity of the winter demonstrates the necessity of the fort being otherwise supplied with flour.

It is proper to add that Mr. Hellman is still a contractor with the Government, having engaged on the 4th of June, 1873, to deliver 72,982 pounds of flour at Camp Harney. As he holds the United States strictly liable on their contracts, no matter how advantageous to him, he should not complain of the rule which subjects him to damage for failure to meet his engagements. The Government has gained nothing in the transaction; it should lose nothing.

The committee, therefore, recommend that the bill be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

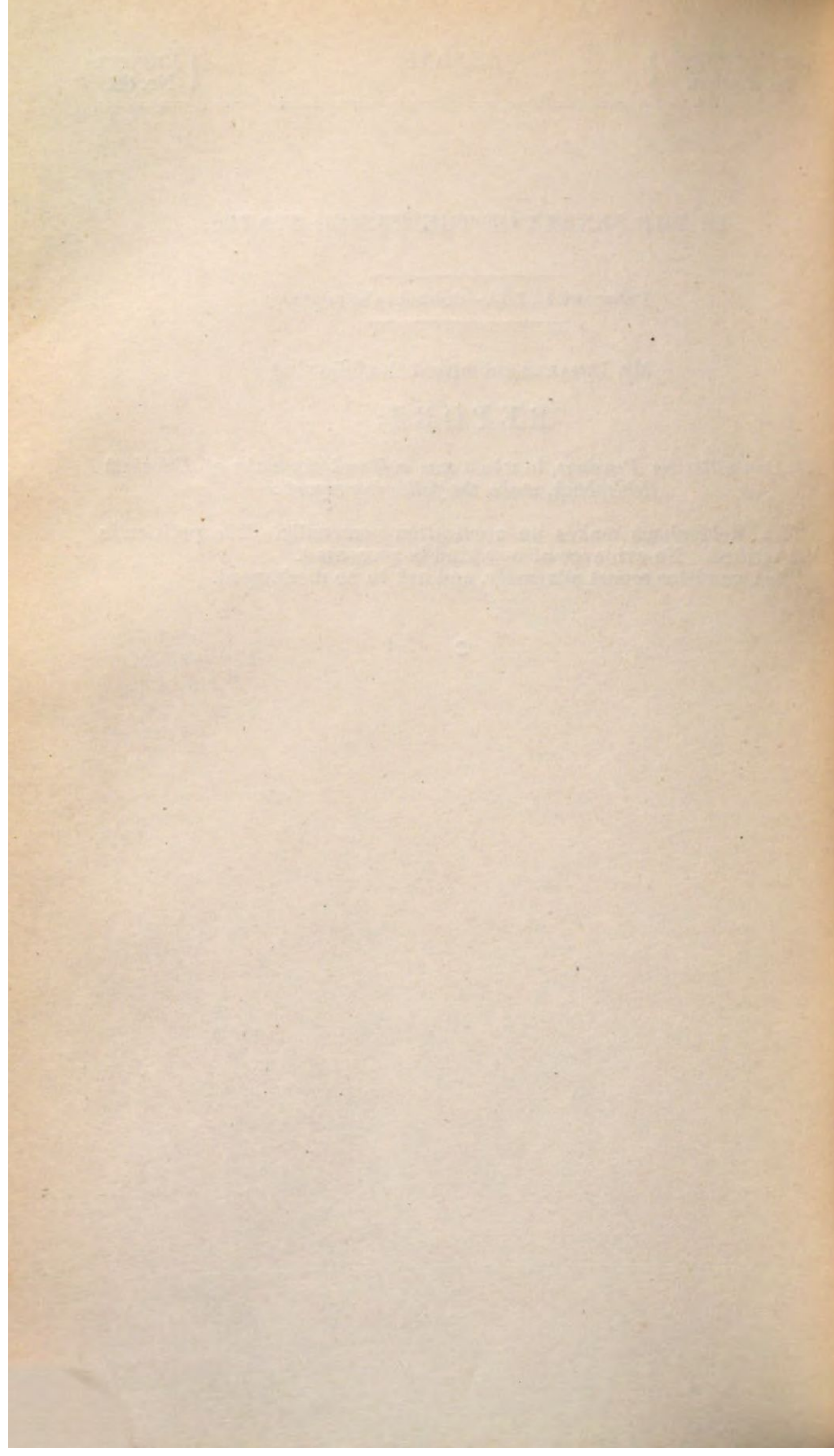
Mr. SAULSBURY submitted the following

REPORT:

[To accompany bill H. R. 215.]

The Committee on Post-Offices and Post-Roads, to whom was referred "An act to exempt George M. Richard, of Pittston, in the State of Pennsylvania, from the payment of \$881.29, for postage-stamps stolen from his office while postmaster," submit the following report :

It appears from the affidavit of said George M. Richard that on the night of March 19, 1873, the safe in his office was blown open and robbed of postage-stamps amounting, according to his estimate, to \$994.17. It also appears that he gave immediate notice to the Post-Office Department at Washington, and that proper, though unsuccessful, efforts were made to ferret out the burglars. Affidavits of two clerks in the office corroborate the statements of the postmaster as to the burglary and the amount of stamps lost; and it appears from the said affidavits that the said loss was not occasioned by any want of care and diligence on the part of the said postmaster or his clerks. The estimate of loss by the Post-Office Department is less than the amount claimed by the said Richard, and is fixed at \$881.29, the amount named in the accompanying bill. The committee are satisfied, from the evidence before them, that the said stamps were lost by reason of the robbery aforesaid, and without the knowledge or connivance of the said postmaster, and therefore recommend the passage of the act aforesaid, H. R. 215.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

The Committee on Pensions have had under consideration the petition of Susan Ten Eyck Williamson for increase of pension, and submit the following report:

The petitioner is now in receipt of a pension at the rate of \$30 per month. She furnishes no evidence of any description in support of her claim.

The committee report adversely, and ask to be discharged.

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IN THE SENATE OF THE UNITED STATES

REPORT

OF THE

REPORT

The Committee on Finance has the honor to acknowledge the receipt of the report of the

The Committee on Finance is now in receipt of a report of a committee of the

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the joint petition of Fleming Crump and William Williamson, praying, for themselves and their widows after them, a pension of \$15 a month, submit the following report:

The petition has neither form nor substance. It is addressed to one of the Senators of Missouri, is not sworn to, and sets forth no ground for relief by Congress. They say, to be sure, that in the year 1824, they were enlisted in the Army of the United States, and, with a detachment of recruits under the command of Captain Shaler, went on board a keel-boat, and with a cordelle and setting poles, they worked the boat up the Missouri River, wading through sloughs up to their waists in water. This they continued to do until they met the floating ice, sleeping on the cold ground in their wet clothes, with a soldier's bed, a blanket and knapsack. Thus they reached the mouth of the Kansas River, and there spent the winter of 1824. In the spring of 1825, they resumed their trip up the Missouri River undergoing similar hardships, from which they say they contracted diseases from which they never recovered. When they reached Council Bluffs, keel-boats were fitted up for ten military companies, commanded by General Atkinson, to form an escort to the Indian agent, who was about holding councils and forming treaties with the different tribes of Indians occupying the country lying between the Mississippi River and the Rocky Mountains. This expedition, they say, is the one known as the Yellowstone expedition of 1825. They allege that they are now seventy years old, and the only two survivors of their grade in that expedition, and that they are now so debilitated and crippled-up with rheumatism, brought on by the exposure and the extreme temperatures of heat and cold in that expedition, that they are rendered unable to obtain by their labor the necessaries of life.

There is no averment that they have applied to the Pension-Office for relief; their statement is not sworn to, nor is there a particle of evidence accompanying their petition. Under these circumstances, there seems but one course for the committee to pursue, however their sympathies may be touched by the recital of hardships encountered and endured by these two old men.

The committee respectfully ask to be discharged from the further consideration of this naked petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

Mr. PATTERSON submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Mrs. Phebe Riker, praying for arrears of pensions, submit the following report :

Her son was killed in battle before Petersburg, June 18, 1864. Being advised by some pension and claim agent that she could not get a pension, she made no application until the 1st of August, 1871, and on the 12th day of June, 1872, a pension was granted her from date of application of eight dollars per month. She now prays for arrears from death of her son up to 1st August, 1871. The law was open to her application, had she made it, and her failure to do so was not the fault of the Government.

The act of July 27, 1868, section 6, and re-enacted in section 15, act of March 3, 1873, governs this case, and the committee fail to see any reason in this case to set aside the limitation provided by the acts above referred to, and report adversely on the petition.

REPORT OF THE

COMMISSIONER OF THE

LAND OFFICE

1873

The following is a list of the lands which have been surveyed and patented to the United States during the year ending June 30, 1873. The lands are described in the following order: first, the lands which have been surveyed and patented to the United States; second, the lands which have been surveyed but not patented; and third, the lands which have been patented but not surveyed. The lands are described in the following order: first, the lands which have been surveyed and patented to the United States; second, the lands which have been surveyed but not patented; and third, the lands which have been patented but not surveyed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

Mr. HAMLIN submitted the following

REPORT:

[To accompany bill S. 470.]

The Committee on Post-Offices and Post-Roads, to whom was referred the petition of James R. Young, late postmaster at Lisbon, New Hampshire, submit the following report:

This case was considered by the Committee on Post-Offices and Post-Roads of the Forty-first Congress, and their report, as follows, is adopted as the report of this committee.

JANUARY 27, 1871.—Ordered to be printed.

Mr. FLANAGAN made the following report, to accompany bill H. R. No. 2243.

The Committee on Post-Offices and Post-Roads, to whom was referred House bill No. 2243, an act for the relief of James R. Young, late postmaster at Lisbon, New Hampshire, with the memorial and evidence accompanying it, make the following report:

On the night of May 15, 1869, the safe of Parker & Young, manufacturers, at Lisbon, New Hampshire, was broken open and robbed by burglars, and postage-stamps to the amount of \$309 84, for which the claimant was officially responsible, were lost or stolen, without any fault or neglect on his part.

The claimant was a member of the firm of Parker & Young, and kept the post-office in their store, depositing the stamps in their safe, a place of equal security to any other in the town of Lisbon.

The committee recommend the passage of the bill without amendment.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition and accompanying papers of Mrs. Almira H. Thompson, praying for a pension for the services of her son, respectfully report :

In this case it is conclusively proved that Francis M. Thompson enlisted as a private in Company I, Sixth Regiment Pennsylvania Reserves; in the year 1861, and was discharged on surgeon's certificate of disability, "by reason of deformity of chest and general debility from typhoid fever in May last;" October 28, 1862, at Portsmouth Grove, Rhode Island. If living, he has up to this time made no application for a pension. The petitioner claims to be the mother of Francis M. Thompson, but offers no proof on that point. She also claims, by reason of the great length of time expired since she last heard of or from him, which she states was April 18, 1862, that he must have died since his discharge from the service, and upon this ground petitions for bounty and pension. No evidence is presented, however, beyond the bare statement of the petitioner, upon which the committee can rely to support the claim. No circumstances are proved which tend to throw any light upon the point save the mere fact stated that the mother has not heard from her son for so many years. This is a strange circumstance, supposing the usual tender relations to have existed between the mother and son. It is equally strange, however, that the mother should have heard nothing from her son from the 18th day of April, 1862, until the 28th day of October, 1862, although both were in the service and generally in hospital, and at no very remote distance from each other during these seven months. The mother was as she claims, and as was doubtless true, a volunteer nurse in the service during the whole period, and for several years beside. This claim for bounty and pension has been before Congress for several years, and has doubtless been reported upon before, but no such report appears among the papers referred to our committee. The same proof has from time to time been relied upon without any additional evidence to strengthen the case; no new fact, no effort apparently to establish any if any exist to throw any light upon the subject.

The committee, therefore, feel constrained to report adversely upon, and ask to be discharged from the further consideration of the case.

Further reporting, the Committee on Pensions have had referred to them the petition and claim of Mrs. Almira H. Thompson for compensation for services as a volunteer nurse during the late civil war, state that it sufficiently appears from the proofs and representations, that

Mrs. Thompson did perform such services in various hospitals, fields, and places, during a period of about four years and a half; that she was efficient, attentive, and useful. But that she expended, as she claims, of her own means voluntarily for the relief of the sick and wounded soldiers the sum of \$3,559 is unsupported by any proofs in the case save her own affidavit; the account is not itemized either as to dates or amounts in any single instance. The next charge she makes is for her services at the rate of \$1,200 per annum, making a total charge against the Government of \$8,859.00; there is no proof of the value of her services in any specified form. It is true there are letters and certificates of various persons, official and unofficial, that she was a good nurse, and in some instances rendered efficient assistance as such; but there is no proof that her services were worth the rate she claims—more than any private or non-commissioned officer and subordinate commanding officers received, although she was evidently supported as to her board, when on duty at hospitals and in the field, by the United States. We feel that to make a special instance of the claim of Mrs. Thompson, and favorably report her claim for any allowance, especially as her claim has for years been before Congress and failed to receive favorable consideration, more specified proofs should be presented, showing in actual expenditures by her for the benefit of sick and wounded soldiers, and of the value of her services as a nurse, as compared to the many excellent women who voluntarily rendered like services to our cause in the late rebellion; services so commendable, worthy of all praise and possibly of more substantial reward should Congress undertake to compensate these noble women by allowances for their services.

We therefore beg to report, without prejudice to the claim of Mrs. Thompson for some reasonable remuneration as a proper case, to be discharged from the further consideration of her claim.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Abraham Lansing, of Massachusetts, praying for an increased pension, beg leave most respectfully to report :

That by the act of July 26, 1866, after a full hearing of his claim, petitioner was granted a pension of \$10 per month, being at the rate then and still allowed by law to a master's mate in the United States service. The petitioner presents no new facts in his case, nor any new feature which the committee feel would justify them in increasing the pension beyond the amount at present allowed him by the special act above referred to, except as to his age. Although seriously injured in the service he is in far better condition as to the means of support and personal comfort than many soldiers who now receive but \$8 per month. The committee therefore pray to be discharged from the further consideration of this case.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of John O'Connor and others, have had the same under consideration, and beg to be discharged from the further consideration of the subject.

C

IN THE SENATE OF THE UNITED STATES

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE

REPORT

OF THE COMMISSIONERS OF THE LAND OFFICE, IN RESPONSE TO A RESOLUTION OF THE SENATE, PASSED MAY 10, 1866, RELATIVE TO THE LANDS BELONGING TO THE UNITED STATES, AND TO THE LANDS BELONGING TO THE SEVERAL STATES.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition and papers, with a bill for a pension to William Daily, respectfully report :

That the evidence shows that Daily enlisted as a private in March, 1862, in Company B, Third Cavalry Missouri State Militia, for three years, and that he was discharged for disability, (shown by surgeon's certificate as stated in his final discharge; the surgeon's certificate, however, does not appear in the evidence before us, nor a copy of it,) May 6, 1863. The petitioner founds his right to a pension on a wound, as he asserts in his petition, inflicted upon him by the fall of his horse upon him while in the line of his duty in riding from the town or city of Louisiana, to Camp Fritz, about one mile from Louisiana, in Missouri, in 1863. The deposition of Dr. Bartlett, who appears to have been examining-surgeon to this regiment, states that the injury was received in March, 1862, and further proves that Daily was sound and healthy when he enlisted; that the injury was a serious one, wounding the abdomen and adjacent lower parts by crushing and bruising them in a very dangerous manner; that he treated Daily "in the best skill of the profession," and although the injured parts healed up outwardly, the mangling and wounding of the parts in his opinion would, and have always injured Daily for any active service either on foot or on horseback, "and that said Daily is unable to procure his living by manual labor to the extent of one-half." The deposition of Dr. H. E. Jones, who was at one time assistant surgeon of the same regiment, shows the fact of Daily's injuries, the character of them, and that he treated him for some time. Daily states that he reported for duty to his command, but does not state when; that he remained some time with it, and then returned to his home in Louisiana on furlough, because, as he states, of injuries received before; that he remained in Louisiana ten weeks, when he rejoined the regiment at Pilot Knob, Mo.; soon went to hospital, and was finally discharged upon surgeon's certificate of disability in May, 1863. There is no proof from any of his commanding officers, regimental or company, to sustain any of his various statements, except from the two surgeons as to the nature of his injuries. There is no proof and no explanation for its absence, to sustain the statement of the petitioner that he was in the line of his duty at the time he states he was riding his horse from the town of Louisiana to his camp, only one mile away, when the injury was received. No explanation is given

of the necessity there was for his going from Louisiana to camp, or from camp, in the first instance, into town; indeed, it seems almost certain he was not in the line of his duty at the time. It would not seem just in such cases to draw upon the bounty of the Government after such long delay, without at least offering some testimony to show that the petitioner was absent on a furlough, with leave, or in the performance of some military duty at the time the wound was received. A communication from the Commissioner of Pensions of date February 9, 1874, states that no claim for a pension has been filed in his Bureau by William Daily, of Company B, Third Cavalry Missouri State Militia. The petitioner endeavors to explain why he failed to procure a bounty on his application to the Government, and the affidavits of the two surgeons are clearly intended to cover some intimations against Daily that reflect a little upon him as a good soldier, as well as to refute the statement made by the proper officer, who refused to grant the bounty he claimed; that the surgeon's certificate of disability showed that he was discharged from the service in May, 1863, on account of rheumatism only. The committee, after a careful consideration of the case and all the papers before them, feel it to be their duty to deny the pension, and respectfully recommend that the bill be indefinitely postponed.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 477.]

The Committee on Pensions, to whom was referred the petition and papers of Jemima Maxwell, widow of John Maxwell, for a pension, report:

That John Maxwell was a private in Company D, Fifth Regiment Missouri State Militia, Six-months' Volunteers; that he enlisted as a soldier on the 24th day of October, 1861, and served continuously until the 3d day of January, 1862, when he died in hospital in Louisiana, Mo., of pneumonia. The evidence clearly shows that Jemima Maxwell was legally married to and is the surviving widow of John Maxwell; that on the 14th of April, 1866, she made application in due form for a pension, under the act of July, 1862, which was rejected by the Commissioner of Pensions because at that time the laws did not recognize the troops with which he was serving as a part of the United States forces. Her application was again renewed after the law of March 3, 1873, went into operation, and was again rejected for the reason as stated in the letter of the Commissioner of Pensions, of date February 6, 1874, addressed to the Committee on Pensions, and herewith filed, the foregoing facts being admitted. The only points to be established are, Was John Maxwell a sound and healthy man when he entered the service, and did he die of disease contracted in the service? Upon these two points the sworn evidence of William G. Douglas, who was captain of the company in which John Maxwell enlisted, is, that while Maxwell was in the line of his duty, on the march from Troy, Lincoln County, to Pike County, in Missouri, on the 27th of December, 1861, it being a severe march, in extremely inclement weather, he was attacked with a disease resulting in pneumonia, with which he died in hospital at Louisiana, Mo., on or about January 30, 1862; that his disability was contracted while in the service, and that his knowledge of the above facts was obtained while he was in command of the company.

Fredrick Grable testifies under oath, May 15, 1867, that he was for thirty years intimately acquainted with John Maxwell; that at the time of his enlistment, as well as before, he was a sound, able-bodied man; that he was not at the time of his enlistment affected with the disease of which he died, nor at any time during their acquaintance; that he, Grable, was on such intimate terms with John Maxwell and his family that he should have known of his ill-health had it existed.

Martha Grable, of the same date, testifies to all the above facts given in the affidavit of Frederick Grable. It is true there is nothing in the testimony of the two last witnesses as to the character and habits of John Maxwell, save the general statement that he was a sound, able-

bodied man up to the time he entered the service. The point of his good health and entire freedom from disease at the time he entered the service is, we think, fairly established by competent although not medical evidence; and we do not hold this, under the circumstances, to be indispensable. It seems to follow almost naturally that his death must correctly be attributable to disease contracted in the service. The declaration and petition of his widow, the affidavit of Captain Douglas, and the certificate of the adjutant-general of Missouri all go to show, and, as we think, beyond any reasonable doubt, that Maxwell died in the service from disease contracted while in the line of his duty, and that, therefore, his widow, Jemima Maxwell, is entitled to pension; and we therefore respectfully report a bill for that purpose, and ask concurrence in the same.

O

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 63.]

The Committee on Claims, to whom was referred the bill (S. 63) for the relief of Perez Dickinson, the surviving partner of James Cowan, deceased, heretofore trading and doing business under the firm name and style of Cowan & Dickinson, of Knoxville, East Tennessee, and likewise a memorial of that firm drawn before the death of Mr. Cowan, submit the following report:

The memorialists, Cowan & Dickinson, of Knoxville, Tenn., present the following claim against the United States:

KNOXVILLE, TENN., January 1, 1864.

THE UNITED STATES TO COWAN & DICKINSON,

Dr.

To two hundred and fifty-six bales cotton, taken by order of Major General Burnside, on the nights of the 17th and 18th of November, 1863, for the use of the fortifications of Knoxville during the siege by the rebel forces under Longstreet; average marketable weight, five hundred and one pounds per bale—(256 bales, 501 pounds).... 123,256 pounds.

Perez Dickinson, a member of the firm, appends to the account his affidavit that they have not been paid for the cotton; that its value is justly due them, and that the firm have severally always been and are loyal citizens of the Government. In a subsequent affidavit he swears the cotton belonged to them exclusively, and no other party had any interest in the same.

In a letter to Major General Schofield, commanding Department of Ohio, dated February 23, 1864, the firm gave a more circumstantial account of their claim, and as their statement cannot well be abridged the committee insert it at length.

KNOXVILLE, TENN., February 23, 1864.

SIR: On the nights of the 17th and 18th of November last, two hundred and fifty-six bales of cotton (average weight, five hundred and twenty-six pounds) were taken from us by order of Major General Burnside, when here commanding, for use on the fortifications then erecting for the defense of Knoxville against the impending attack of the rebels under Longstreet.

The cotton, we are gratified to know, was of great service, and a very valuable aid in the necessarily hasty preparations for a successful defense of the town. A portion of this has been taken, we learn, for sanitary purposes, &c., and the remainder is still in the works. Much of it has been wasted and all of it more or less injured by constant exposure, the breaking of ropes, and destruction of the baling. This cotton is of great pecuniary value to us, and we consider it due to us, old citizens of known, unswerving and uncompromising loyalty, that our interests should be fully protected, and feel entire confidence that is the wish and intention of the Government.

We would therefore respectfully call your attention to this subject. We believe justice and equity to us under the circumstances would be that the Government should give us a voucher for this cotton at New York market value, deducting a liberal price of transportation and internal revenue.

If this arrangement is not consistent with the policy of the Government in such cases, we would suggest that the cotton should be immediately collected and sent forward to Louisville or Cincinnati, and fair ascertained damages for loss, &c., awarded us.

We would also say that General Burnside, the 20th of September last, agreed to furnish transportation for our cotton, with other produce we had on hand. He forwarded one hundred and one bales, in pursuance of this arrangement, but owing to the military situation and demands upon him for transportation, the balance was not forwarded. General Burnside regretted the detention as well as ourselves.

We herewith inclose General Burnside's receipt and certificate, which was given to our Mr. Dickinson, and he expressed an earnest wish that the matter might be satisfactorily adjusted.

Hoping this matter may receive your early consideration,

We are, very respectfully,

COWAN & DICKINSON.

Major-General SCHOFIELD,

Commanding Department Ohio, Headquarters Knoxville.

The receipt and certificate of General Burnside, referred to in the above letter, are as follows:

KNOXVILLE, *December 12, 1863.*

Received of Messrs. Cowan & Dickinson eighty (80) bales of cotton for use in the fortifications erected for the defense of the city during the siege.

A. E. BURNSIDE,
Major-General.

BOSTON, MASS., *February 4, 1864.*

This is to certify that during the siege of Knoxville, in East Tennessee, a quantity of cotton, say some two hundred and fifty-six bales, was taken from the store-house of Messrs. Cowan & Dickinson, in Knoxville, for the use of the fortifications around the city. This cotton was, as I believe, the property of Messrs. Cowan & Dickinson, and was imperatively needed for the good of the public service. I had no time after the raising of the siege to take account of this property and to give the proper vouchers for the same. Captain Davis, of the Twenty-first Massachusetts Volunteers, and provost marshal, has given a certificate for eighty (80) bales taken by him, by order, and for which the above receipt is a voucher, and I am satisfied that the remainder was taken and used as set forth in the affidavit of Messrs. Cowan & Dickinson.

A. E. BURNSIDE,
Major-General.

On the 26th of February, 1864, Major-General Schofield issued Special Order No. 57, directing the chief quartermaster of that department to proceed to collect all the cotton that had been used in the construction of fortifications and for other purposes in the vicinity of Knoxville, not absolutely necessary for the public service, and ship the same to Louisville, to be turned over to the chief quartermaster there, to be disposed of for the benefit of the Government, according to existing regulations. He was directed to ascertain the parties to whom the cotton belonged, the amount taken from each party, their loyalty, and to give the proper vouchers therefor, according to the loyalty of each.

In a subsequent order, dated March 8, 1864, directed to Colonel Ransom, chief quartermaster, General Schofield directed that the vouchers to be given for the cotton used on the fortifications about Knoxville should be qualified, to be paid only upon the order of the War Department.

The execution of this order was committed by Colonel Ransom to Captain Whitman, A. Q. M., who, on the 28th day of April, 1864, two months after the order, made report to his chief as follows:

I have the honor to report in regard to the claims for cotton alleged to have been taken by the military authorities for the defenses of Knoxville, and the disposition made of the same, as follows:

- 6 bales ; weight, 2,269 pounds ; claimant, I. L. Cain ; (Exhibit A.)
 7 bales ; weight, 3,500 pounds ; claimant, A. A. Kyle ; (Exhibit B.)
 10 bales ; weight, unknown, claimant, A. Kennedy ; (Exhibit C.)
 34 bales ; weight, 17,303 pounds ; claimant, J. W. C. Hazen ; (Exhibit D.)
 256 bales ; weight, 133,120 pounds ; claimant, Cowan & Dickinson ; (Exhibit E.)

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The above constitutes all the cotton for which claims are made. The following are the facts in relation to the disposition made of it, as far as known :

- 158 bales and parts of bales, weight not known, collected from fortifications by order of General Schofield in March, 1864.
 20 bales and parts of bales, weight not known, collected from fortifications by order of General Schofield in April, 1864.
 40 bales and parts of bales, weight, 20,448 pounds, used by the Medical Department by order of General Foster.

 218

Ninety-five unaccounted for and locality unknown.

Of the above there are at present eight bales in the hands of the Medical Department unexpended, and twenty bales at the depot.

The one hundred and fifty-eight bales collected from the fortifications in March were ordered to be put into a building at the depot, but permission being refused by the railroad authorities, on the ground that it would be exposed to fire from the engines in passing, it was deposited in a secure place on the hillside at a safe distance from the railroad, and was so packed, and subjected to such oversight as to protect it from being pilfered, as it had been while at the fortifications. Soon after it was placed there, and while preparations and plans were being matured to put it in a condition to be shipped, it was set on fire by three truant boys at play in the neighborhood. By strenuous exertions for two days and nights, a portion was saved, and still lies upon the ground, amounting, it may be, when properly secured, to from twelve to twenty bales. The frequent rains of the season have so washed and bleached it that, when dried, it will prove of tolerable quality. The great press of business in the Quartermaster's Department, the scarcity of help, and the frequent rains of the season, have rendered it necessary and advisable to allow it to remain where it is for a while under proper watch. With a short period of steady dry weather it may be got into a condition to be sacked and sent away. At present there are no sacks to be obtained here. The twenty bales on hand have but recently been collected from the fortifications.

It is proper to add that the incendiaries were arrested, and, after a rigid examination before the post commandant, were discharged, on want of proof of anything more than a children's desire to see what they could do in their play by touching a lighted match to a bale of cotton.

Very respectfully, your obedient servant,

E. B. WHITMAN,
Captain and Acting Quartermaster.

This report was forwarded by Colonel Ransom to General Schofield, who forwarded the same to the War Department, and on the 14th day of June, 1864, the Secretary of War referred the same to General S. P. Carter, provost-marshal, East Tennessee, to cause an investigation to be made as to the facts respecting this cotton, to determine what had become of the ninety-five missing bales, through whose negligence or other fault the one hundred and thirty-eight bales were burnt, and whether any part of that which was rescued from the conflagration had been restored to the claimants.

On the 27th day of September, 1864, General Carter made report to the Secretary of War, in which he states, substantially, that reliance was to be placed in the statements of the claimants, under oath, as to the quantity of the cotton-bales taken ; that the officers connected with the taking of the cotton belonged to the Ninth Army Corps, then with the Army of the Potomac ; that as to the ninety five bales unaccounted for, he had made all possible efforts to learn what had become of them, and had come to the conclusion that they were partly used by the troops encamped around the fortifications, who were in want of clothing and

blankets to fill their bunks with, and after they vacated their encampments the cotton was partly taken by poor people and partly scattered by the winds. It also appeared that some of the cotton was taken from the fortifications after the siege and during the night-time by the people of the neighborhood and sold or secreted. Search had been instituted by his orders, but nothing except two small lots was discovered, amounting to two hundred and fifty pounds. He proceeds to say that some cotton was taken from the fortifications by Lieutenant-Colonel Babcock, chief engineer, to calk a number of ponton boats, but the amount so used could not be ascertained. In relation to the one hundred and fifty-eight bales collected by Captain Whitman and piled near the railroad depot, as above stated, General Carter, in his report, says:

The cotton near the railroad depot was piled up, exposed to the air, without any shelter whatever, and it seems also without a sufficient guard, but as to who should be held responsible for this neglect is left for the decision of the War Department. The cotton was not under the control of this office.

The report concludes as follows:

The cotton saved from the conflagration, and estimated as aforesaid at about eight thousand four hundred pounds, was used, according to the report of Captain E. B. Whitman, assistant quartermaster, for various purposes, except about six thousand pounds, which are still in the hands of the quartermaster's department; twenty bales, (weight not known,) collected from the fortifications after the conflagration, were sent, in accordance with Special Orders No. 57, before mentioned, to Brigadier-General Allen, chief quartermaster at Louisville, Ky.

The disposition of all the cotton can be reduced to the following:

	Bales.
Amount collected from the fortifications previous to the conflagration.....	158
Amount collected after the conflagration.....	20
Amount collected for use of medical department.....	40
	—
	218
Consumed by fire.....	138 bales.
Saved, about.....	20 "
Used by the medical department.....	40 "
Sent to Louisville, Ky.....	20 "
	—
	218

Captain Whitman, as assistant quartermaster, in a report dated September 26, 1864, to Major Gratz, assistant adjutant-general, thus states the cotton account:

Amount saved from the fire, fifteen to twenty bales.....	8,400 lbs.
Amount used by the medical department.....	1,500
Amount furnished for stuffing cushions.....	500
Amount furnished for calking pontons.....	200
Amount furnished for packing ammunition.....	200
Amount on hand in gunny-sacks, smoked and singed, about.....	6,000
	—
	8,400

Sent to Brigadier-General Allen, chief quartermaster, Louisville, Ky., twenty bales, (weight unknown.) This last lot was not collected from the fortifications until after the conflagration.

The general result may be thus summed up:

Number of bales taken for use in the fortifications.....	313
Of these there belonged to Cowan & Dickinson.....	256
	—
Leaving belonging to others.....	57
	—
Of the whole number, 313, there were consumed by fire.....	138
Unaccounted for.....	95
	—
	233

This left in the possession of the Government eighty bales, of which

twenty were shipped to Louisville. What the quartermaster realized from this sale does not appear.

General Humphreys, Chief of Engineers, certifies that no information is to be found in his office relative to the final disposition of the cotton used in the defenses of Knoxville. He adds:

"Special Orders No. 57, Headquarters Department of the Ohio, of February 26, 1864, with the inclosed papers, directs the chief quartermaster at Knoxville to collect all the cotton used in the defenses, and for other purposes not necessary for the public service, and ship the same to Louisville, to be turned over to the chief quartermaster there to be disposed of for the benefit of the Government, according to existing regulations."

It appears from the evidence that Cowan & Dickinson forwarded one hundred and eleven bales of cotton in October, 1863, which was sold, a part in Cincinnati, and a part in New York, in December, 1863, and January, 1864. The average to each bale was five hundred and one pounds. That sold in Cincinnati brought seventy-five cents per pound; that sold in New York, eighty cents. What were the expenses of transportation, commission, insurance, &c., does not appear.

It appears in evidence that the claim of Cowan & Dickinson was, on the 15th December, 1866, referred to the military commission on claims, for examination. They report that they have examined the account of that firm for cotton taken for the use of the fortifications, and that they are satisfied that the number of bales as specified (two hundred and fifty-six) were taken from them; that the average marketable weight of the same was five hundred and one pounds; that James H. Cowan and Perez Dickinson, composing the firm of Cowan & Dickinson, always have been and are consistent and strictly loyal citizens of the United States Government, and that they are entitled to payment for the cotton thus taken from them.

At a subsequent date, however, Colonel Clinton, recorder of the claims commission, reports to the Secretary of War, in respect to this claim, that the claimants present ample proofs of loyalty, and under the ruling of the commission in similar cases they would be entitled to the return of the cotton, or, if sold, to its net proceeds, but that under the ruling of the War Department, based on the opinion of the Judge-Advocate-General, in Elliott's case, it would seem the claim was barred by congressional legislation.

Upon the reference of this case by the War Department to the Judge-Advocate-General, Judge Holt indorses the following opinion:

BUREAU MILITARY JUSTICE,
December 4, 1867.

Respectfully returned, and the opinion expressed that, under existing legislation, the executive department of the Government has no authority to allow this claim. The cotton was seized in the enemy's country, and on the theater of the war, and was appropriated to the strengthening of one of our forts then threatened with an attack by an advancing column of rebel forces. For this act of legitimate warfare the Government incurred no responsibility, and if the payment claimed is hereafter made it will be a mere gratuity bestowed, and not the satisfaction of any legal liability. Under the extremely liberal proviso in favor of the State of Tennessee this claim might be right-fully adjusted, could the cotton seized be held to have been either *quartermaster's* or *commissary stores*. Most clearly, however, under the circumstances, it was neither the one nor the other.

J. HOLT,
Judge-Advocate-General.

The committee, in concluding the insertion of documentary proof in this report, call attention to the following letter of General Burnside, by whose authority this cotton was taken, written on December 10, 1866, to General Canby:

I take great pleasure in representing to you the claim presented by Messrs. Cowan & Dickinson, of East Tennessee.

At the time the forces under my command were besieged at Knoxville by General Longstreet, it was necessary to fortify the place as rapidly as possible; and in the exigencies of the time a quantity of cotton—say some two hundred and fifty-six bales—belonging to Messrs. Cowan & Dickinson, was taken and used by our forces for fortifications around the city. The necessity for this step was imperative, and the cotton was taken without waiting to give the usual and necessary vouchers for it, and after the raising of the siege my time was too much occupied to take the proper steps to secure the claims to Messrs. Cowan & Dickinson.

These gentlemen are, and have been thoroughly loyal to the United States Government, and have yielded their property without complaint, and they only ask a just compensation for their loss. I hope they may receive from the United States Government a sufficient sum to make good the amount of property yielded to the public service.

It may be added, without quoting the proofs, that the loyalty and upright character of this firm are established beyond a doubt.

What, then, are the rights of these claimants? Were they constructive enemies? Was the district where their property was seized "enemy's country," in the sense of that expression? Was the seizure a military capture of hostile property?

Upon the solution of these questions, the actual loyalty of the claimants being conceded, their title to compensation must depend.

The committee do not regard Knoxville, at the time of the seizure of this cotton, as enemy's country. If not, then the claimants were not constructive enemies. The historical facts of this period of the war are very clear. General Burnside occupied Knoxville with the Union forces early in September, 1863. He was welcomed, says the historian, with such an outpouring of enthusiastic loyalty and gratitude as had rarely been equaled. East Tennessee, amid all the persecutions to which the friends of the Government had been subjected, had remained invincibly loyal throughout the war. The Army was welcomed with cheers and fond greetings; the national flags, which had been secreted for many months, now waved from almost every house, and the people manifested the sincerest joy at the restoration of the national authority and protection, which, amid all the varying fortunes of the war subsequently, were never superseded in that locality. The city was beleaguered by Longstreet on the 17th day of November, but the assault upon the defenses was not made until the 28th of the month, which was directed upon an unfinished work known as Fort Sanders. In this assault, made by a picked storming party of three brigades, the loss of the assailants was about eight hundred, while on our side the entire loss was only about one hundred—only fifteen of these in the fort.

The evidence shows that these cotton bales so seized were used on the works of defense for the purpose of making parapets and traverses. Says Captain Poe, who so skillfully engineered the defenses: "In my opinion the emergency was very great and the use of the cotton necessary. It certainly answered an important end in Fort Sanders, at which point the assault of the enemy was repulsed with terrible slaughter, with very slight loss to ourselves. In the fort every traverse and bomb-proof were of cotton, as were also the cheeks of some of the embrasures."

The siege of the city was raised on the 5th day of December, and the enemy left that section of country.

But the important fact to be noticed in this connection is, that from the arrival of Burnside's forces on the 3d day of September, 1863, the national authority was established and protection was extended over persons and property, and this authority was continued ever afterward. On the 17th and 18th days of November, when this cotton was seized, the military occupation by the national military forces had been con-

tinuous and uninterrupted for two months and a half. General Burnside had entered East Tennessee with an army of 20,000 men, and maintained his position and authority there. His occupation and control of the country were actual and substantial; not illusory, imperfect, or transient. Being such, according to the decision in the Venice case, (2 Wallace Rep., 259,) his military occupation of the place drew after it the full measure of protection to persons and property consistent with a necessary subjection to military government.

As Knoxville was not at this time enemy country, so the seizure of the cotton was not placed on the ground of a military capture of hostile property, but it was taken from acknowledged friends of the Government, for the sole purpose of being used in defending the city, and with the avowed purpose of the commanding officer, under whose order it was seized, of giving them a voucher for the same, which the committee interpret to mean an obligation binding the Government to return or account for the value of the cotton. In no just sense can this cotton be deemed captured or abandoned property. It is doubtful if the law requiring the Treasury agent to sell captured property extended to this cotton.

If Knoxville was not enemy country at this time, its loyal inhabitants stood in the same relation to the Government as the citizens of Philadelphia or Washington. There is no intermediate condition of country between enemy and friendly. Knoxville was one or the other, and the committee are of opinion that the Supreme Court have decided its *status*. If, upon the approach of Early's forces in July, 1863, when he menaced Washington, General Angur could have seized the cotton-bales of loyal citizens of the latter city, and used and destroyed them in the defenses, without creating any liability on the part of the Government, then these claimants have no case. But the committee are of opinion that the claimants have a clear title to compensation, and the only doubt has been as to its extent. For all except the one hundred and thirty-eight bales burned, and the ninety-five bales missing, the liability rests upon the ground that the United States have used the cotton in part and sold the residue. The commanding general had given a voucher for this amount. This disposes of eighty bales, of five hundred and one pounds each.

How stands the case as to the remainder? Suppose that General Burnside had given, as he purposed doing, a voucher for the whole two hundred and fifty-six bales, instead of the eighty, could there be any reasonable doubt that it would have created, according to the purpose of the maker of it, an obligation on the part of the Government to return the cotton or pay for its value? Is that the fair interpretation of the one he gave for eighty bales? If it does not mean that, what was the purpose of giving it? Had General Burnside the power to bind the Government in a transaction of this nature in a friendly country? If he had not, who connected with that Army had? His commission and assignment to the command of that military district gave him the immediate control of the military forces under his command, and the power to employ all necessary means to expel the enemy and maintain there the authority of the Government. If a thousand laborers outside the Army were necessary to work on the fortifications, could he not employ them and bind his Government to pay them their wages? Could he not purchase provisions and forage for the use of the Army, and tools to work on the fortifications? If not, why not? And if he could do this, why could he not bind his Government to return or pay for cotton-bales used to defend the city and the Army? If he could, then it is clear, from the evidence,

that he intended to supply a voucher for the remaining one hundred and seventy-six bales.

It is clear that General Schofield, the successor of General Burnside, recognized the right of these claimants to the value of their cotton, when, three days subsequent to the letter of Cowan & Dickinson, he issued his order of February 26, 1864, to his quartermaster, to collect all the cotton not absolutely necessary for the public service, with the view of having it sold, and a voucher being given to them for the amount.

The commission on claims was instituted for some purpose. They assumed jurisdiction of this case, examined it, and made their report. That report was not objected to on the ground that they had exceeded their authority. Of course, if they have any authority at all, their very name would import that their business was to ascertain facts and report their conclusions. It was organized, we suppose, in the interest of truth and justice. If it could report against a claim, it could report in favor of it. Its decision was either entitled to respect or no respect. If entitled to no respect, why was it organized at all? Well, this commission has spoken in this matter and settled these facts:

1. That the claimants are loyal men and ever have been.
2. That two hundred and fifty-six bales of cotton, of five hundred and one pounds to each bale, were taken from them.
3. That they are entitled to payment for the same.

This commission has returned this verdict to the War Department, which recognizes its authority to speak in the matter by accepting the report and dissenting from its conclusions.

The committee accepts the facts as found by the commission, and concur in its conclusion. If there was such a public emergency as justified the military authority in seizing this friendly cotton for the public good, in a section of the country where the authority of the Government was established and ever afterward maintained, the committee think it was the duty of that authority to restore it as soon as the emergency passed. Pass it soon did, and Knoxville was not afterward in danger. And yet the military authorities allowed this cotton to remain in the defenses, exposed to the elements and to theft, until late in February, before any effort was made to collect it. A large body of troops during all this time had remained stationed at Knoxville, with little to do, and yet ninety-five bales of cotton have been abstracted from the fortifications under their very eyes, so negligently had it been guarded. When, more than three months after its seizure, upon the urgent application of the owners, what remained had been collected, one hundred and fifty-eight bales were placed in an exposed situation, without cover or guard to protect it, and it is scarce to be wondered at that such combustible material was ignited and nearly all consumed. It is a matter of regret that the United States should be made responsible for so great a loss in consequence of the sheer and unpardonable carelessness of their military representatives, and it were much to be desired that the officers in command, charged with the protection of this property, should be held responsible for their neglect of duty. Still, whether there be or be not a recourse, there can be little doubt of the duty of the Government to make the petitioners whole.

The committee have fixed upon fifty cents a pound as the fair value of the cotton at Knoxville at the time of its seizure. Estimating the bales to average five hundred and one pounds each, the claimants are entitled, for the two hundred and fifty-six bales taken, to the sum of \$64,128, and the committee now report back the bill granting that sum to the survivor of the firm, and recommend its passage without amendment.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1874.—Ordered to be printed.

Mr. BOREMAN submitted the following

REPORT:

[To accompany bill S. 48.]

The Committee on Claims, to whom was referred the bill (S. 48) for the relief of loyal citizens of Loudoun County, Virginia, therein named, having considered the same, beg leave to submit the following report :

This bill contemplates payment for property destroyed by fire by order of General Sheridan, which, together with the claims of sundry citizens of the same county for live-stock taken under the same order for the use of the Army, or sold for the benefit of the United States, was favorably considered and reported by the Committee on Claims during the Forty-second Congress, when a bill was passed providing compensation *for the live-stock so taken*. In again presenting to the Senate the claims of these injured citizens, the committee adopt so much of their former report as relates to the property so destroyed by fire :

On the 27th day of November, 1864, General Sheridan issued the following order :

“HEADQUARTERS MIDDLE MILITARY DIVISION,
“November 27, 1864.

“GENERAL: You are hereby directed to proceed, to-morrow morning at 7 o'clock, with two brigades of your division, now in camp, to the east side of the Blue Ridge, via Ashby's Gap, and operate against the guerrillas in the district of country bounded on the south by the line of the Manassas Gap Railroad as far east as White Plains; on the east by the Bull Run Range; on the West by the Shenandoah River; and on the north by the Potomac.

“This section has been the hot-bed of lawless bands, who have, from time to time, depredated upon small parties on the line of Army communications, on safeguards left at houses, and on small parties of our troops. Their real object is plunder and highway robbery.

“To clear the country of these parties that are bringing destruction upon the innocent as well as their guilty supporters by their cowardly acts, you will consume and destroy all forage and subsistence, burn all barns and mills and their contents, and drive off all stock in the region the boundaries of which are above described. This order must be literally executed, bearing in mind, however, that no dwellings are to be burned, and that no personal violence be offered the citizens.

“The ultimate results of the guerrilla system of warfare is the total destruction of all private rights in the country occupied by such parties. This destruction may as well commence at once, and the responsibility of it must rest upon the authorities at Richmond, who have acknowledged the legitimacy of guerrilla bands.

“The injury done to this Army by them is very slight; the injury they have indirectly inflicted upon the people and upon the rebel army may be counted by millions.

“The reserve brigade of your division will move to Snickersville on the 29th. Snickersville should be your point of concentration, and the point from which you should operate in destroying toward the Potomac.

2 RELIEF OF LOYAL CITIZENS OF LOUDOUN COUNTY, VA.

"Four days' subsistence will be taken by the command. Forage can be gathered from the country through which you pass.

"You will return to your present camp, via Snickersville, on the fifth day.

"By command of Major-General Sheridan :

"JAMES W. FORSYTH,
"Lieutenant-Colonel and Chief of Staff.

"Brevet Major-General MERRITT,
"Commanding First Cavalry Division."

This order was vigorously executed. In February, 1865, the claimants presented their petition to Congress, where it has, in one or the other House of Congress, been ever since pending, without any final action upon it, except in relation to the claim for live stock taken, as above set forth.

The petitioners in their memorial make the following statement, which we have reason to believe is true in point of fact, to wit:

"Throughout all the trials and hardships of this war we have borne faithful allegiance to the Federal Government, subjecting our persons and property to peril on that account; and we conceive we are entitled to its protection, for we do not acknowledge that we are separated from the Federal Union, to which we are warmly attached. When thus deprived of our means of subsistence for no fault of our own, but from a military necessity, we trust the burden will not be suffered to rest solely upon us, but that a paternal Government will afford us adequate relief."

In corroboration of this statement the petitioners adduce the certificate of Brig. Gen. Thomas C. Devin, commanding Second Brigade, First Cavalry Division, then in winter-quarters near Lovettsville, in Loudoun County, Virginia. He says:

"I find in this county a large loyal population, worthy the consideration of the Government."

The destruction of property by fire and the seizure of live stock were intended to be indiscriminate in the region to which the order applied, and the loss fell on both the loyal and the disloyal citizens. There has been no estimate of the losses sustained by the latter class. The claims of *loyal* citizens herewith presented, and which we believe to be just, amount to \$199,228.24 for property burned. The vouchers for these claims referred to the committee consist of bills specifying the property, with the affidavit of the owner, and a certificate, attached to each by the appraisers, or filed with the papers, stating that the party is loyal to the Government of the United States, and has never voluntarily given aid to the rebellion.

These certificates are sworn to before A. W. Chamberlain, acting assistant adjutant-general, Second Brigade, First Cavalry Division, Middle Military Division, or other persons authorized to administer oaths. These vouchers, with very few exceptions, are accompanied by a certificate of Brigadier-General Devin, reciting the names of the appraisers, who, he says, "Are all and severally known to me as citizens of Virginia who have continued loyal to the Government of the United States. Some of them I have known for years, and others are known to me by reputation."

It is generally known that the loyal citizens of Loudoun County, from the beginning of the rebellion to the end of it, suffered great losses from the depredations of the insurgents, and that some of them had been imprisoned on account of their fidelity to this Government. They also suffered at times from the encampment of large bodies of the Union troops in their neighborhood, but for *these losses*, incident to a state of war, they have not asked compensation. Their claims now presented are for losses resulting from a direct military order.

The committee have prepared the following list of the claimants, containing a statement of the amount of property destroyed belonging to each of said claimants respectively, appraised and proved in the manner hereinbefore set forth:

Claims of loyal citizens of Loudoun County, Virginia, for property destroyed by fire, by order of General Sheridan, duly appraised and sworn to before Lieut. A. W. Chamberlain, Second Brigade, First Cavalry Division, Middle Military Division, at Lovettsville, Va., and before S. Muldoon, first lieutenant and assistant provost-marshal, Second Cavalry Brigade, First Cavalry Division, and J. H. Mahnkin, captain and assistant adjutant-general, Second Brigade, First Cavalry Division, at same place, and others.

	Value of prop- erty destroyed.
George Abel	\$122 00
George F. Abel	75 00
Margaret Alders	1, 225 90
Daniel Adams	30 50
Peter Adams	247 00
William H. Adams	660 00
James Allder	500 00
John Arnett	30 00

	Value of property destroyed.
Amos Beans.....	\$392 00
John D. Brown.....	619 00
John H. Brown.....	345 00
William Brown.....	165 00
Thomas Brown.....	438 00
William Brown, jr.....	150 00
Samuel N. Brown.....	1,888 00
John S. Baker.....	365 00
Samuel Beans.....	101 00
Michael Beamer.....	522 00
David L. Beall.....	572 00
William H. Brown.....	265 00
Benjamin Birdsall.....	4,261 00
Benjamin Birdsall, jr.....	415 00
Thomas J. Brown.....	822 50
William H. H. Beans.....	898 00
Jonathan Brown.....	2,480 00
Edward Brown.....	484 00
John Boger.....	37 00
Isaac Brown.....	717 00
William H. Boger.....	29 70
Richard Brown.....	2,175 50
Mahlon Beans, jr.....	135 00
William Beans.....	2,859 00
Samuel Baker.....	1,039 50
William Brown, (of John).....	100 00
Joseph C. Baker.....	122 00
David Brown.....	464 00
Samuel Ball.....	540 32
Samuel Brown.....	1,886 00
John and George Cooper.....	249 00
Samuel Crim.....	1,188 00
Jesse Colbert.....	74 00
William H. Cooper.....	105 00
Peter Compher, jr.....	929 00
Abner Conard.....	1,991 50
Isaac Camp.....	475 00
Joel Craven.....	1,917 00
John H. Crim.....	1,221 50
Susannah Crim.....	2,824 50
Samuel Clendenning, sr.....	1,208 00
George F. Crim.....	900 65
George F. Cooper.....	490 40
Samuel Crockett.....	1,833 00
John Compher.....	185 00
George Cooper.....	163 27
J. Henry Clapham.....	1,160 25
William Crim.....	561 00
Mary and Lucinda Dodd.....	2,117 50
Mahlon Demery.....	1,804 25
Rodney Davis.....	25 00
John P. Derry.....	570 00
Eli Derry.....	270 00
Elizabeth Edwards.....	846 00
Rodney Edwards.....	45 00
James M. Frame.....	120 00
Joseph C. Frey.....	948 00
Noah Frey.....	1,689 00
Joseph H. Fry.....	1,295 25
Enoch Fenton.....	122 00
Michael Fry's estate.....	1,896 25
John Fry, sr.....	2,835 75
Henry Gaver.....	94 00
Nathan Gregg.....	1,105 00
Ebenezer Grubb, sr.....	8,299 00
Thomas Gore.....	849 00
John and William Gregg.....	2,356 00
Jonathar C Goodin.....	292 00

4 RELIEF OF LOYAL CITIZENS OF LOUDOUN COUNTY, VA.

	Value of property destroyed.
John Graham.....	\$19 50
George Hickman.....	1, 685 20
Charles L. Hollingworth.....	150 00
James Hoge.....	1, 314 00
William Hough.....	115 00
James Hough.....	2, 330 90
Amasa Hough.....	225 00
Isaac Hough.....	757 50
William Haws.....	117 00
Edward Hamilton.....	390 00
George W. Hoge.....	408 50
James Haws.....	60 00
Thomas E. Hatcher.....	1, 238 00
E. C. H. House.....	140 00
Jesse Hoge.....	173 75
Joshua Hatcher.....	139 00
Heston Hirst.....	1, 650 00
William Hoge.....	131 50
William Holmes.....	916 00
Rachel N. Hoge.....	200 00
Joseph James.....	100 00
Asa M. Janney.....	7, 536 00
James C. Janney.....	4, 240 00
Levi James.....	483 00
Zedekiah Kidwell.....	175 00
Martin Kanally.....	45 00
Harman Kephart.....	509 00
Solomon Lucas, (colored).....	739 00
John Lynn.....	152 00
Nicholas Lynn.....	1, 425 50
William Lemon.....	18 00
E. A. Love.....	310 00
Archibald Merchant.....	326 00
Joseph C. Mock.....	1, 480 75
Lander McDaniel, (colored).....	260 00
E. Y. Mathews.....	2, 366 38
Thomas B. Marche.....	373 40
Isaac Nichols.....	564 00
Joseph Nichols.....	2, 966 00
William Nichols, (of Isaac).....	319 50
John F. Newlin.....	2, 182 00
John Orrison.....	65 00
Leven Ogden.....	1, 128 00
William Otley.....	1, 970 25
Jesse Piggott.....	85 00
Joseph Pierpoint.....	20 00
Thomas Phillips.....	6, 449 20
Charles E. Paxon.....	234 95
Isaac Piggott.....	6, 651 00
John S. Pancoast.....	79 50
Joshua Pancoast's estate.....	1, 250 00
John F. Porter.....	363 00
N. B. Peacock.....	4, 105 00
Enos Purcell.....	1, 082 00
Eli Pierpoint.....	72 00
John Pancoast.....	1, 454 00
Julius Peck.....	426 00
William Rickard.....	52 50
X. J. Richardson.....	45 00
Bushrod Robey.....	163 00
Nathan Roberts.....	1, 120 00
Edward Ryan.....	74 00
Samuel L. Steer.....	1, 084 50
Jonas P. Schooley.....	3, 906 00
Benjamin Stevens.....	48 00
Joshua and Miriam Smith.....	744 25
Rachel Steer.....	813 00
Thomas R. Smith.....	2, 300 00

	Value of property destroyed.
George Shoemaker, (of David).....	\$939 00
Rebecca Stone.....	1,857 30
Mary J. Smith.....	1,285 50
Jot Smith.....	2,260 00
Eliza Sagle.....	138 00
Washington Stone.....	1,735 00
John Smith's estate.....	3,287 00
Springdale Boarding School.....	400 00
Richard Speaks.....	46 00
Samuel S. Stone.....	216 00
W. H. Taylor.....	212 75
Lot Tavenner.....	1,964 50
Joseph Taylor.....	145 00
Lewis Taylor.....	274 50
David Tavenner.....	1,063 74
Henry S. Taylor.....	1,206 00
James W. Torreyson.....	72 00
Hiram Thayer.....	28 00
Samuel Torreyson.....	339 00
Richard H. Taylor.....	350 00
Yardley Taylor.....	1,576 00
Bernard Taylor.....	1,931 00
Samuel Thompson, (colored).....	301 00
Mahlon Thomas.....	1,722 00
William Virts.....	100 00
Henry Virts.....	969 00
Fenlon Virts.....	23 50
G. Peter Virts.....	103 00
Joseph and Mortimore Virts.....	360 00
Addison Virts.....	30 00
John Virts.....	60 00
John W. Virts.....	281 50
George W. Virts.....	30 00
William Vickers.....	1,050 70
William Williams.....	4,983 23
Joseph L. Wright.....	60 00
Henry L. Wince.....	350 00
William Wirtz.....	300 00
William Wilson.....	2,055 00
John W. Wenner.....	910 00
John Walford.....	2,373 00
Asa R. Walford.....	195 00
Jacob R. Walker.....	52 50
David Wine.....	36 00
Charles Wright.....	480 00
George Warner.....	3,241 00
Thornton Whitacre.....	124 00
Thomas Young.....	40 00
Thomas J. Nichols.....	4,701 00
James M. Walker.....	555 00
Charles W. Henderson.....	45 00
George W. Baker.....	105 00
Aquilla Janney.....	356 00
John W. Mason.....	22 50
Lavinia Head.....	410 00
William F. Mercer.....	264 00
Joshua Pusey.....	810 00
Mahlon K. Taylor's estate.....	700 00
Michael H. Virts.....	76 00
Susanah Wolford.....	310 00
Thomas Eaches.....	1,459 00
John W. Moore.....	112 50
Total.....	199,228 24

To show the manner in which these accounts are authenticated, the committee present the following exact copy of one of them as an example of the whole. Each of them is stated and authenticated substantially in the same manner:

United States to Thomas Young.

DR.

1864.—To property burned by United States troops, by order of General Sheridan—
 November 30.—To straw of three hundred bushels of wheat..... \$15 00
 To ten bushels of white wheat, at \$2.50..... 25 00
40 00

I hereby certify on honor that the above accounts, amounting to seven hundred and eighty-five dollars, are correct and just.

THOMAS YOUNG.

We, the undersigned, do solemnly affirm that Thomas Young is loyal to the Government of the United States, and that he has never voluntarily given aid to the rebellion; and further, that the within account is just, as appraised by us, to the best of our knowledge and belief.

JOSEPH NICHOLS.
 GEORGE GREGG.
 WILLIAM HOLMES.

Sworn to and subscribed before me this 28th of January, 1865, at Lovettsville, Virginia.

A. W. CHAMBERLAIN,

*Lieut. 1st N. Y. Dragoons, A. A. A. General, 2d Brig., 1st Cav. D., M. M. D.**Oath prescribed by act of Congress approved July 2, 1862.*COUNTY OF LOUDOUN, *State of Virginia, ss:*

I, the undersigned, of the county of Loudoun and State of Virginia, do solemnly affirm that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto. And I do further affirm that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion.

THOMAS YOUNG.

Sworn and subscribed to before us this 16th day of February, 1866.

MAHLON THOMAS, *J. P.*ENOCH FENTON, *J. P.*LOT TAVENNER, *J. P.*ELI I. HOGE, *J. P.*

[Five-cent internal-revenue stamp, canceled.]

STATE OF VIRGINIA, *to wit:*

I, Charles P. Janney, clerk of the county court of Loudoun County, in the State aforesaid, do certify that Mahlon Thomas, Enoch Fenton, Lot Tavenner, and Eli Hoge, whose genuine signatures appear to the above certificate, are justices of the peace for the county and State aforesaid, duly commissioned and qualified.

Given under my hand and the seal of said court, at Leesburgh, this 26th day of February, 1866.

[SEAL.]

CHAS. P. JANNEY, *C. C.*

[Five-cent internal-revenue stamp, canceled.]

For the live stock taken for the use of the Army, or for the benefit of the United States, under General Sheridan's order, Congress has already provided compensation, and the committee are unable to perceive why the duty of the Government to make compensation for the property destroyed is not equally obligatory. The primary object of the order of General Sheridan, in ordering the destruction of one class of property, was the same as the seizure and sale of the other, namely, to weaken the enemy and overcome the rebellion. The exigency requiring both was the same; the purpose was the same; and the effect on the enemy was the same; and, in the opinion of the committee, the same ought to be paid.

The committee, therefore, report back the said Senate bill No. 48, with the recommendation that the same do pass.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

R E P O R T :

The Committee on Military Affairs, to whom was referred the petition of a committee from the American Institute of Homeopathy, asking extension of the signal-service so as to obtain information for the benefit of the public health, respectfully report :

This petition was referred by the committee to General Myer, Chief Signal-Officer, who returns the same with letter of approval, and draught of bill required to provide for same by law.

As this bill requires an appropriation of \$5,000, it must originate in the House of Representatives. Let petition and accompanying papers be referred accordingly.

THE UNIVERSITY OF CHICAGO

IN THE DEPARTMENT OF THE HISTORY OF ARTS

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition and accompanying affidavits of Silas Hurd, Seth Hurd, Ezra C. Blackman, and James Blackman, of Huntington, Fairfield County, Connecticut, praying damages, &c., have had the same under consideration, and beg leave to report :

That the petitioners are, and were at the time herein stated, the owners of a fishing-place in the Housatonic River, in the said town of Huntington; they acquired such right of such fishing-place under the laws of said State of Connecticut and long use of the same; the said fishing-place was valuable to the petitioners; that during the summer of 1873, certain persons, while in the service of the United States, engaged in widening and deepening the channel of said river, by removing obstructions therefrom so as to improve the navigation of the same, carelessly and unnecessarily, and contrary to the will of the petitioners, deposited mud and other things taken from said channel in said fishing-place, and thus ruined the same. It appears that the persons who thus injured the petitioners are non-residents of said State, and are of doubtful pecuniary responsibility; and that the damage they have thus sustained is the sum of fifteen hundred dollars.

The committee, upon consideration, are of the opinion that the petitioners are not entitled to be paid anything by the Government on account of the several matters and things mentioned in their said petition, and beg to be discharged from the further consideration of the same.

It is not only the fact that the...

The...

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT:

[To accompany bill H. R. 1224.]

The Committee on Military Affairs, to whom was referred the petition of W. H. Denniston, late acting second lieutenant of Company D, Seventieth Regiment New York Volunteers, together with bill H. R. 1224, have had the same under consideration, and have directed me to report as follows:

That the proof, which consists of numerous affidavits of officers and privates of said regiment, shows satisfactorily that the petitioner was assigned to duty as second lieutenant of Company D, of said regiment, December 24, 1861, at Camp Farnum, Maryland, his name being placed on the adjutant's roster of regimental officers, and acted as such officer. That afterward, in March, 1862, by a regimental order, he was transferred to Company I, of said regiment, and served as such officer until and during the battle at Williamsburgh, Va., and Captain Mitchell having been killed and Lieutenant Levick wounded, said Denniston was placed in command of said company in the latter part of said engagement. Levick, being but slightly wounded, was on duty next day, and Denniston was transferred to and placed in command of Company G, (May 5, 1862,) where he remained in command during and until after the battle of Fair Oaks and the attack on Hooker's division, in front of Richmond. He had been suffering with rheumatism for some time previous to the last engagement, when the severe and constant exposure and hardships incident thereto completely incapacitated him for duty, when, by command of the surgeon, he was sent to the division hospital about the 5th of June, 1862.

The petitioner's claim for services as first lieutenant from March 6 to May 6, 1862, and as captain from May 6 to August 6, 1862, is not substantiated by the proof, as it fails to show any order, commission, or other evidence of promotion. But the proof is conclusive that he was assigned to duty as before stated; was regularly placed on the roster of the regiment as second lieutenant of Company D; that he performed well all the duties of said position in camp and in action; and that in all respects he was well esteemed, and obeyed as such officer until June 5, 1862.

Before he returned to his command, or was physically able to do so, commissions were made out and all vacancies filled up, leaving the petitioner out on account of his health, and because he had never been

commissioned or mustered. Just when this occurred is not clearly shown, but appears to have been in July, 1862.

Lieutenant-Colonel Holt and others testify that the regimental records were lost or destroyed during the "change of base."

The committee are therefore of opinion that William H. Denniston is entitled to the pay of a second lieutenant of infantry, from December 24, 1861, to July 15, 1862, and, as the proof shows he has received no pay for such service, do therefore recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1874.—Ordered to be printed.

Mr. ALLISON submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of George Reisinger, of Oregon, for a pension, report adversely, and ask to be discharged from its further consideration.

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REPORT

The Committee on the Study of the
History of the University of Chicago
has the honor to report to the Board of Trustees
the results of its work during the year 1900-1901.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

R E P O R T :

[To accompany bill S. 108.]

The Committee on Military Affairs, to whom was referred the bill (S. 108) to relinquish the interest of the United States in certain lands to the city and county of San Francisco, in the State of California, report as follows:

This is a bill to relinquish the interest of the United States in certain lands to the city and county of San Francisco, California. It appears, from the records presented, that the Presidio military reservation was originally surveyed and set apart under proper authority, but some years subsequently was re-surveyed, when it was found that the new survey included a portion of the city-plat of San Francisco, already laid out, settled upon, and improved to the value of a large amount. Hence the title originally acquired, and held *bona fide* by the city of San Francisco, to that portion of land found to be, by re-survey, included within the Presidio reservation, is clouded by the title of the Government. The land is not needed for military purposes, and inasmuch as the title of the city and county of San Francisco thereto appears to have been acquired equitably, and in good faith and in due respect to the original survey and determination of the boundary-line of the said Presidio military reservation, and the rights of persons in and to the said lands, and the improvements thereupon, having vested in good faith, and in proper succession, under an equitable title, believed originally to have been legal, the Government should not continue to cloud the title through the errors or omissions of its officers who first made said survey.

The tract in controversy being only the narrow triangular or wedge-shaped area between the old meridian and new meridian, and containing but a few acres of land, the committee therefore recommend the passage of the bill.

The first part of the book is devoted to a general history of the world, from the beginning of time to the present day. The author discusses the various races and nations, their customs and manners, and the progress of civilization. He also touches upon the history of the arts and sciences, and the influence of religion and philosophy upon the human mind. The second part of the book is a more detailed account of the history of the world, from the time of the first great flood to the present day. The author describes the various empires and kingdoms, their rise and fall, and the events which have shaped the world as we know it. He also discusses the progress of the human race, and the influence of the various religions and philosophies upon the human mind. The third part of the book is a more detailed account of the history of the world, from the time of the first great flood to the present day. The author describes the various empires and kingdoms, their rise and fall, and the events which have shaped the world as we know it. He also discusses the progress of the human race, and the influence of the various religions and philosophies upon the human mind.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1874.—Ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

[To accompany bill S. 171.]

The Committee on Claims, to whom was referred the bill (S. 171) "for the benefit of the legatees of Asbury Dickins, deceased," have had the same under consideration and submit the following report:

Asbury Dickins presented his petition at the first session of the Thirty-third Congress, upon which a bill for his benefit was reported, which bill passed the Senate, and, after being favorably reported upon by the House Committee on Claims, was referred to the Court of Claims.

July 6, 1855, he presented his petition to that court, showing that he held the office of chief clerk in the Treasury Department from April 1, 1829, until August 22, 1833, and the office of chief clerk in the Department of State from August 22, 1833, until December 12, 1836; that during these years the President, under the act of May 8, 1792, (1 Stat., p. 281,) authorized him to perform the duties of Secretary of War and Secretary of State at different times when the contingencies mentioned in the act happened. He claims that he acted as Secretary of the Treasury 133 days and as Secretary of State 226 days. These aggregates were made up as follows:

1. AS ACTING SECRETARY OF THE TREASURY.

	Days.
From April 24, 1829, to May 26, 1829, inclusive.....	33
From June 21, 1831, to August 7, 1831, inclusive.....	48
From October 18, 1831, to October 26, 1831, inclusive.....	9
From March 15, 1832, to March 30, 1832, inclusive.....	16
From October 1, 1832, to October 10, 1832, inclusive.....	10
From November 8, 1832, to November 17, 1832, inclusive.....	10
From May 6, 1833, to May 9, 1833, inclusive.....	4
From May 29, 1833, to May 31, 1833, inclusive.....	3
Total.....	133

2. AS ACTING SECRETARY OF STATE.

	Days.
From August 10, 1833, to August 24, 1833, inclusive.....	15
From November 11, 1833, to November 15, 1833, inclusive.....	5
From October 11, 1834, to October 31, 1834, inclusive.....	21
From May 2, 1835, to June 13, 1835, inclusive.....	43
From July 6, 1835, to July 13, 1835, inclusive.....	8
From August 31, 1835, to September 8, 1835, inclusive.....	9
From September 28, 1835, to October 19, 1835, inclusive.....	22
From May 19, 1836, to May 23, 1836, inclusive.....	5
From July 7, 1836, to August 29, 1836, inclusive.....	54
From September 27, 1836, to November 9, 1836, inclusive.....	44
Total.....	226

Alleging that he performed during these periods the duties of chief clerk and Secretary of the respective Departments, he claimed a *pro-rata* portion of the annual salaries allowed by law to the Secretaries, admitting that he was paid his salary as chief clerk for the whole time, except from June 21 to August 7, 1831, and that for that time he was paid as Secretary of the Treasury.

The bill passed by the Senate in the Thirty-third Congress allowed him the *pro-rata* salaries of the Secretaries for the periods he acted as such, less the salary for the same periods as chief clerk. He was thus claiming in court the salaries of both offices for the time he alleged he had discharged the duties of both, although in his petition to Congress he had asked only the difference between the pay of chief clerk and that of the head of a Department.

The court ruled that Mr. Dickins held these offices separate from the office of chief clerk; that he held at the same time two offices; that there was no law to prohibit his doing so; that he discharged the duties of both offices and was entitled to compensation accordingly.

Excluding the time for which he was paid as Secretary of the Treasury from his demand, the claim, as presented to the accounting officers for services as Secretary of the Treasury, amounted to.....	\$1, 235 57
For services as Secretary of State.....	2, 479 16
And adding for the period from June 21 to August 7, 1831, his salary also as chief clerk.....	261 46

The whole claim was.....	3, 976 19
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The court found him entitled to 85 days as Secretary of Treasury.....	1, 395 88
To 260 days as Secretary of State.....	\$3, 693 37
And for services as chief clerk.....	261 46
	5, 350 71

When this report from the Court of Claims was submitted to Congress, a report was made upon it (No. 94, H. R., Thirty-fourth Congress, first session) refusing to allow it, and dissenting from the finding of the court. Without quoting from the House report we merely state that its grounds were:

1. That the mere authority to discharge temporarily the duties of Secretary of the Treasury and Secretary of State under the act of 1792 did not make Mr. Dickins Secretary of these Departments respectively, for these offices were still held by the incumbents whose places he was temporarily filling, and that he, therefore did not hold two offices during these periods.

2. That as he did not hold the two offices he was not entitled to the two salaries.

The case was before the 35th, 36th, and 37th Congresses without final action. It was again before the 40th Congress upon petition of the legatees of Mr. Dickins after his death, and passed the Senate March 13, 1868.

It is again presented by this bill for the benefit of the legatees of Mr. Dickins, asking \$4,276.81 as the difference between the salary of Secretary and chief clerk. His will is not presented to enable us to determine who are the legatees named in it. But assuming that there are proper parties to receive the money, if it ought to be paid, we proceed to dispose of that question.

While the Government never pleads the bar of limitation, certainly the length of time during which parties have slept without asserting the existence of rights may be fairly considered in passing upon their justice and equity. The services for which this claim is made were rendered from 1829 to 1836. In 1836, December 12, Mr. Dickins became the Secretary of the Senate, and continued to occupy that position until July 15, 1861. We learn from his own petition that it was not until after he heard of allowances for such services having been made to his successors, Mr. Young and Mr. Fletcher Webster, that he was impressed with the justice of presenting a claim for his services, and such claim was not presented by him until the year 1849.

The payment for *part* of the time he served as Secretary of the Treasury would naturally suggest that if entitled by law to pay for part, he was entitled to pay for all of the time he had so served, and he was during all this time in a position in which he had peculiar advantages for having his claim acted upon. But while he was thus quiet, asserting no claim, Congress passed three acts, all declaring that double salaries or extra pay ought to be forbidden in such cases. (Act of 3d March, 1839, 5 Stat., 349; act 23d August, 1842, sec. 2, 5 Stat., 510; act 26th August, 1842, sec. 12, 5 Stat., 525.)

The same policy has been reiterated by the acts of September 30, 1850, sec. 1, 9 Stat., 542; and 31st August, 1852, 10 Stat., 99.

If it be averred that the services were rendered before the passage of these acts, it may be answered that the same policy was in effect declared by the act of April 20, 1818, 3 Stat., 447. That act fixed, among others, the salaries of the clerks of the War and State Departments, and provided—

SEC. 9. "And no higher or other allowance shall be made to any clerk in the said Departments and offices than is authorized by this act."

If it be alleged that the President might, under the act of 1792, authorize a person not holding any office to discharge the duties of Secretary, and that he would be entitled to reasonable compensation, it may be replied that such was not understood to have been the intention of the act, nor has that been its practical application. It is believed there has been no instance, from its passage to the present time, in which the President has exercised the authority conferred upon him, by the selection of a person not then in public service, and in the public service in the very department where the duties were to be performed. The act did not create a new office nor authorize a new appointment to an old office. It empowered the President to intrust the discharge of the duties of one office during certain contingencies to the incumbent of another office.

As Mr. Dickins rested thirteen years after the services were thus performed before claiming compensation at the rate paid the Secretaries, from which it may fairly be argued he did not consider himself entitled to make such claim; as Congress, during that time and before, had distinctly declared and has since declared, that such claims ought not to be paid; as all applications for payment hitherto, even during the time he was one of the officers of the Senate have been unsuccessful, this committee, after the lapse of thirty-eight years since the services were rendered, does not feel itself called upon to say that Mr. Dickins was wrong in concluding for so long a time that he had no claim or that Congress has been wrong in refusing to recognize it after he came to a contrary conclusion.

We recommend that the bill be indefinitely postponed.

Mr. MITCHELL submitted the following as the

VIEWS OF THE MINORITY:

The minority of your committee respectfully beg leave to submit the following as their views, and their reasons for dissenting from the conclusions of the majority :

This claim is an old one, and consequently has received the close scrutiny of your committee. The petition of Asbury Dickins was originally presented to the United States Senate February 23, 1854, at the sitting of the first session of the Thirty-third Congress, and the claim, in some form, has been before nearly every Congress since that time.

The high character of the original petitioner, and the persistency with which his legal representatives have urged their claim upon the attention of Congress and the Court of Claims, taken in connection with the fact that the amount claimed is not of that character calculated to create suspicion as to any intentional wrong upon the part of the claimants, have appeared to be additional reasons why it should receive at this time a thorough investigation, to the end that justice may be done, either by the payment of the claim, if found just, or by its rejection in such emphatic terms, if found to be otherwise, as will forever settle the controversy. And it is a source of regret that, after this thorough investigation, your committee are unable to present a unanimous report.

This is a claim for compensation for services performed by Asbury Dickins as Acting Secretary of the Treasury at different periods between the 24th day of April, 1829, and the 31st day of May, 1833, both days inclusive—in all 133 days, (less the time from the 21st day of June to the 7th day of August of the same year, during which last-described period he received compensation as Secretary of the Treasury;) and for services performed by him as Acting Secretary of State at different periods between the 10th of August, 1833, and the 9th of November, 1836, inclusive—in all 226 days. These services as Acting Secretary of the Treasury were rendered in pursuance of eight different appointments to such position by the President of the United States, (Andrew Jackson;) and at the date of each appointment, and during the whole time of such service as Secretary of the Treasury, he was the chief clerk of the Treasury Department, and received the compensation provided by law for such officer. The services for which compensation is claimed as Secretary of State were performed in pursuance of ten different appointments by the same President to that position; and at the time of each of these appointments, and during the whole time of service under them, Mr. Dickins was chief clerk of the State Department, and performed its duties.

There is no material controversy in regard to the facts, and upon these the naked legal question is presented as to the right of claimants to compensation as the legal representatives of Mr. Dickins to an amount equal to the difference, respectively, between the amounts he received as chief clerk and the compensation then fixed by law for the Secretaries of Treasury and State.

As the difference between the two, respectively, is all that is claimed, the question as to the right to receive both does not arise in this case. This difference is \$3,385 15.

By the 8th section of the act of Congress of May 8, 1792, entitled "An act making alterations in the Treasury and War Departments," Statutes at Large, vol. 1, 281, it is provided as follows:

"SECTION 8. *And be it further enacted*, That in case of the death, absence from the seat of Government, or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said Departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease."

It was in pursuance of this section of the statute that these appointments were made.

The petitioner avers that one of the two contingencies of "absence from the seat of Government," or "sickness of the Secretary," mentioned in the statute, existed at the time each of these appointments was made by the President, and continued to exist during the time for which compensation is claimed. The fact that the appointments were made by the President is, in the judgment of the minority of your committee, conclusive upon the points, both as to the existence of the contingencies at the time, and as to the necessity of the appointments, by reason of them.

The act referred to makes it "lawful for the President of the United States, in case he shall think it necessary, to authorize *any* person or persons, at his discretion, to perform the duties of the said respective offices." It is true the compensation for such services are not fixed *in terms* by the law providing for the appointment, but can it be presumed that Congress intended to require such services without reasonable allowance? or can it be said that the performance of such services, when so required by the President, does not present at least an equitable claim for compensation? It seems to the minority of your committee not. The fact that Mr. Dickins was, at the date of these several appointments, and during the time of service under them, chief clerk, cannot possibly affect the general question as to the right of a person to receive a reasonable and just allowance for such services. The act in question did not limit the President, in his selection, to the chief clerks of the Departments, or to any particular class of persons; he is empowered, at his discretion, on the happening of any of the three contingencies specified, namely, death, sickness, or absence from the seat of Government, "to authorize *any person or persons* to perform the duties of the said respective offices, &c." Here is an absolute and unconditional warrant given by Congress to the President (within a specified limit of circumstances) to select *any* person, and authorize such person to perform the responsible duties of Secretary of State and Secretary of the Treasury. Suppose President Jackson, instead of appointing the chief clerk of these Departments, had appointed, as he might have lawfully done, some person wholly disconnected, not only from the Departments, but from all official position whatsoever; and suppose such person had performed the duties of the position, as did Asbury Dickins, could any serious question be raised as to his right to a reasonable compensation for such services? Certainly not. And if such stranger to official position would be entitled to compensation in the case stated, then it follows, as a necessary sequence, that Mr. Dickins, or his legal representatives, would be entitled to such reasonable allowance, unless

there was some provision of law in existence at the time these services were rendered that precluded him from receiving the same, for the reason that he was chief clerk at the time of performing the service as Secretary, or some provision that made the two positions of chief clerk and Secretary incompatible in law.

Were this a claim arising since the passage of the acts of March 3, 1839, and of August 23, 1842, it would not be difficult to determine that the chief clerk of a Department performing the duties of Acting Secretary of such Department under the appointment of the President, would not be entitled to any other compensation than that of his regular salary as chief clerk, as these laws inhibit the allowance of any compensation to a clerk or other officer in a Department who performs the duties of any other officer in addition to his own. But we are of the opinion these acts were not intended to be retroactive in their operation—if, indeed, they could have been—as affecting rather the contract than the remedy—and that it would be unjust to attempt to give to them such construction. Recurring, then, to the provisions of law in existence at the time these services were rendered, that could by any possibility have any bearing upon the the question at issue, the minority of your committee are unable to find any provision that would invalidate Mr. Dickins's claim, or that would place him in any worse position in reference to it, from the fact that he was chief clerk of the Department at the time of rendering the service as Secretary, than he would have been had he not been such chief clerk.

The 9th section, it is true, of the act of Congress of 1818, entitled "An act to regulate and fix the compensation of the clerks in the different offices," provides as follows :

"SEC. 9. That the compensation allowed by this act to clerks, shall commence from and after the 31st day of March last, and it shall be the duty of the Secretaries for the Departments of State, Treasury, War, and Navy, of the Commissioners of the Navy, and the Postmaster-General, to report to Congress at the beginning of each year the names of the clerks they have employed respectively in the preceding year, together with the time each clerk was actively employed during the year, and the sums paid to each ; and no higher or other allowance shall be made to any clerk in the said Departments and offices than is authorized by this act."

It has been claimed that this section prohibits the payment of a claim such as the one under consideration ; but it is clear that the meaning of this section is simply this : That no such clerk shall receive any other compensation *as clerk* than that allowed by the act, and it does not touch the question as to the right of any such clerk to a compensation in addition to his regular salary *as clerk*, for his discharge of the duties of any *other* office to which he might be lawfully called by the President.

Mr. Dickins, while discharging the duties of the office of Secretary of State, held an office separate from that of chief clerk, and so when he held the position of Secretary of the Treasury. This was the ruling of the Court of Claims, and in the correctness of such ruling the minority of your committee concur. He, in fact, held two offices at the same time and performed the duties of both. Were they incompatible ? We cannot say that they were ; there was no law declaring them so, neither was there any law that prohibited Mr. Dickins, directly or inferentially, from performing the duties of both ; he did perform the duties of both, as history records, in a most faithful manner, and with an ability for which he was eminent ; he has received compensation but for the one.

His legal representatives are, in our judgment entitled to an amount equal to the difference between the amount received as salary for chief clerk and the amount of the salary of Cabinet Officers at that time.

It was decided by Judge Story, in the case of the United States *vs.* Morse, (Story's Reports, Vol. III, page 87,) that two offices, not incompatible, may be conferred on one person, and that he will be entitled to the compensation of both.

Chief Justice Taney decided the same thing in the case of the United States *vs.* White *et al.*, in the circuit court of the United States, district of Maryland.

Attorney-General Wirt, in an opinion given in reference to a claim of General Cass, for certain services performed by him while governor of Michigan, uses this language:

His salary is a compensation for his services *as governor*, but the services for which he claims do not belong to his duty as governor of Michigan Territory, and having been employed by the Government to perform these services, he has a fair claim for them on the principles of a *quantum meruit*. The facts conceded, I think his right undeniable. (Opinions Attorneys-General, vol. 2, p. 189.)

Attorney-General Legare, in passing upon the validity of a claim of a Mr. Young, then chief clerk of the Treasury Department, for services similar to those performed by Mr. Dickins, and for which compensation is now claimed, says: "In the matter of Mr. Young's claim I am of opinion that the Secretary of the Treasury *ad interim*, appointed by virtue of an *express* law, has a claim upon the Government for the usual, or if there be no usual, for a reasonable compensation for his services in that capacity; but I do not think he can obtain it without an appropriation by Congress for the purpose."

In the case of White, to which we have referred, the defendant had been regularly appointed navy-agent, with a salary fixed by law. While acting in this capacity he was also appointed to discharge the duties *ad interim* of a purser in the Navy, and performed its duties, and Chief Justice Taney held he was entitled to both compensations, and used this language:

There is no law which prohibits a person from holding two offices at the same time.

Caleb Cushing, while Attorney-General of the United States, in a very able and elaborate opinion on the diplomatic and consular systems of the United States, uses this language:

Besides which, an officer may lawfully be, and occasionally is, appointed either a statute officer or other, without any existing provision for his compensation, which, if he be lawfully appointed, creates a valid debt against the Government." (See pamphlet opinion of Attorney-General Cushing, page 30.)

On both principle and authority, then, the minority of your committee are of the opinion that this claim is a just one and should be paid. An additional reason exists in favor of its payment. The Thirty-third Congress referred this claim to the Court of Claims for adjudication, and it was sustained by Judge Blackford, who delivered the opinion of the court. Will Congress repudiate the award of its own referee? We have much to say in reference to the importance, in a moral point of view, of maintaining inviolate the plighted faith of the nation. What are good morals in this respect in reference to a large debt represented by the nation's bonds *ought* to be good morals in reference to an award made against the Government by its own referee, even though the amount may be insignificant. But it is said in the majority report that the same policy in reference to claims of this class was in effect declared by the act of April 20, 1818, (3 Stat. at L., 447,) and that it was subsequently clearly declared by the acts of March 3, 1839, and August 23,

1842. Most certainly not, for two reasons: First, because the act of April 20, 1818, is not susceptible of any such construction; had it been, no necessity would have existed for the acts that followed. Both Congress and the Court of Claims have decided that such was not the proper construction or policy of the act of 1818; and the very fact that the acts of 1839 and 1842 were passed, ought to be, without anything else, conclusive on this point. But, in addition to this, Congress has furnished numerous precedents for the action proposed by the minority of your committee. The Congress on March 14, 1826, (4 Stats. at L., 148,) passed an act appropriating \$950 to be paid to Thomas H. Gillis, the chief clerk of the Fourth Auditor's office, for his services as *Acting Auditor* from 8th October, 1823, to 23d June, 1824, during which period the Auditor was sick, receiving, however, his full pay as Auditor.

Congress again passed an act on September 30, 1850, (9 Stat. at L., 542, 543) providing for the payment to Richard Rush of a balance of \$259.59, ascertained to be due him by the accounting officers of the Treasury, for his salary as Attorney-General of the United States for the time he acted as such, under an acting appointment, between the years 1825 and 1829, while he was Secretary of the Treasury, and William Wirt was Attorney-General, and during which time both received full pay attaching to their commissions, respectively.

And, in addition to these precedents, it is conceded in the majority report that Mr. Dickins's successors, Mr. Young and Mr. Fletcher Webster, have both been allowed compensation for similar services to those rendered by Mr. Dickins, and for which compensation is now claimed by his legatees. And it is a fact that such allowance was in accordance with the views of the then Attorney-General of the United States, expressed in the opinion hereinbefore quoted.

The chairman of the committee, in presenting the majority report, says:

This committee, after the lapse of thirty-eight years since the services were rendered, does not feel itself called upon to say that Mr. Dickens was wrong in considering for so long a time that he had no claim, or that Congress has been wrong in refusing to recognize it after he came to a contrary conclusion.

The minority of your committee cannot, in face of the full history of this claim, concur in this view, nor feel justified in urging this suggestion as a reason why the claim, if just, should not now be paid; upon the contrary, such delay upon the part of Congress, provided the claim is just, as we conceive it to be, is, in our opinion, a strong reason why prompt action should be had now.

Your minority would here present a full statement of the history of this claim, from which it may be judged whether claimants have been guilty of any such *laches* as should now be urged against them.

The claim of Asbury Dickins was first presented in 1849. On the 11th August, 1849, the First Auditor of the Treasury examined and adjusted the account; but there was no appropriation out of which it could be paid.

February 20, 1854, (see Senate Journal, 1st sess., 33d Cong., p. 193,) Mr. Badger presented Mr. Dickins's memorial to the Senate asking the difference between the salaries of chief clerk and Secretary of the State and of the Treasury Departments for the time he was chief clerk of those Departments and performed the duties of Secretary under appointments from the President of the United States. This memorial was referred to the Committee on Claims, and on the 23d February, 1854, (see Journal, p. 207,) Mr. Broadhead, the chairman, reported a bill to pay it. (See Senate bill No. 230 and Report No. 124, 1st sess., 33d Cong.; also

Cong. Globe, pp. 464 and 596.) This bill passed the Senate March 10, 1854, (see Journal, p. 247,) and went to the House same day, (see Journal H. R., p. 487,) where it was referred to the Committee on Claims March 31, (see Journal H. R., pp. 586, 587,) and favorably reported by Mr. Edgerton, the chairman of that committee, July 15, 1854, (see Journal, p. 1148,) and placed on the private calendar, where it was reached but once during that session, and that was on what was called "objection-day," when, according to the rules of the House, a single objection, without any cause assigned, prevents the passage of a bill. Objection was made, and, therefore, it had to remain on the calendar for the next session.

During the second session of the Thirty-third Congress it was only reached on an objection-day, and was objected to by Mr. Letcher, (see Cong. Globe., p. 203,) and was remaining on the private calendar when Congress adjourned, March 3, 1855. On that day the House passed the following resolution, (see Journal, p. 571:)

Resolved, That all reports which any of the committees have directed to be made to the House shall be delivered to the clerk, and they are hereby ordered to be printed; and such of them as are of a private character, together with all the bills that shall remain on the private calendar, or on the Speaker's table, at the adjournment of Congress, are hereby referred, with the accompanying papers, to the Court of Claims.

Under the above resolution this claim was sent by the officers of the House of Representatives to the Court of Claims, (see Journal H. R., February 14, 1856, pp. 536-539, 1st sess., 34th Cong.) The next session after the papers were referred to the Court of Claims, they made their report, and presented a bill, (see report No. 9, of Court of Claims, 1st sess., 34th Cong.; also, Journal H. R., p. 991, and Cong. Globe, p. 792) on the 2d April, 1856, allowing Mr. Dickins the salary of both chief clerk and Secretary of the Departments for the time he performed the duties of both offices. This bill, with the report, was referred to the Committee on Claims in each House. In the Senate, on the 2d April, 1856, (see Cong. Globe, 1st. sess., 34th Cong., p. 792,) and on the 16th May the Committee of the Senate reported back the bill with an amendment, (see Senate bill No. 314, 1st sess., 34th Cong.; also, Cong. Globe, p. 1239.) This amendment allowed the difference between the salaries of chief clerk and Secretary. It came up in the Senate on the 11th July, 1856. A few remarks were made, (see Cong. Globe, p. 1609,) and the bill as amended passed the Senate same day.

On the 14th July, 1856, this bill was sent to the House of Representatives, (see Journal H. R., p. 1196, and Cong. Globe, p. 1626,) and on the 19th it was referred to the Committee on Claims, (see Journal H. R., p. 1243.) Before the Senate bill reached the House of Representatives, (namely, on the 23d May, 1856,) Mr. Taylor, from the Committee on Claims, made an adverse report, (report No. 94, see Journal H. R., p. 1031,) to accompany the bill and report of the Court of Claims, (bill No. 2, C. C.) Nothing further appears to have been done at this session. In the second session no private claims were acted upon.

In the third session, Thirty-fourth Congress, on the 10th January, 1857, (see Journal H. R., p. 206,) the Committee of the Whole had under consideration and reported "H. R. C. C. 2, a bill for the relief of Asbury Dickins, with a recommendation that it do not pass." There was no discussion. Mr. Letcher made the motion, and it was agreed to without a word being said, (see Cong. Globe, p. 285.) Thus it was thrown in the House, to be discussed.

On the 17th January, 1857, (see Journal H. R., p. 246,) it came up again. Some amendments were proposed, but none agreed to, and there

was considerable discussion, (see Cong. Globe, 3d. sess., 34th Cong., pp. 357-363,) but no vote was had.

This case was never again reached during this session, unless on objection-days, and, consequently, no further action was had on it. It, however, was very fully discussed on the 30th January, when the case of Michael Nourse was before the Committee of the Whole, (see Cong. Globe, pp. 506-516.)

On the 5th January, 1858, Thirty-fifth Congress, first session, the Court of Claims bill was referred, in the House of Representatives, to the Committee on Claims, (see Journal, p. 135, and Cong. Globe, p. 193.) On the 14th May, 1858, Mr. Marshall, of Illinois, reported, from the Committee on Claims, the bill without amendment, with a recommendation that it do pass. There was, also, an adverse report from the minority, (see report No. 384; also, Journal, p. 807, and Cong. Globe, p. 2134.) This bill came up but once during the session, the 28th May, objection-day, and was objected to by Mr. Letcher, (see Cong. Globe, p. 2486.) The consequence was, it was not acted upon.

In the House of Representatives, second session, Thirty-fifth Congress, this bill came up but once, objection-day, 4th February, 1859. Mr. Dean objected, (see Cong. Globe, p. 821.) Consequently the bill was not acted upon.

In the Senate, Mr. Iverson reported from the Committee on Claims on the 28th January, 1859, (see Senate Journal, p. 226, and Cong. Globe, p. 642.)

In the Senate, Thirty-sixth Congress, first session, Mr. Iverson, from the Committee on Claims, on the 6th February, 1860, reported Senate bill No. 129, (see Journal, p. 127, and Cong. Globe, p. 667.) This bill was the same as the bill reported by the Court of Claims allowing the double salary. It came up in the Senate on the 6th April, and, on Mr. Iverson's motion, was amended so as to allow only the difference between the salaries of chief clerk and Secretary, and in that form passed the Senate the same day, (see Journal, p. 353, and Cong. Globe, p. 1567.) This bill was received in the House of Representatives 10th April, (see Journal, p. 684, and Cong. Globe, p. 1601,) and referred to the Committee on Claims, 12th April, (see Journal, p. 711-712; also, Cong. Globe, p. 1689.) On the 15th June, 1860, Mr. Maynard, from the Committee on Claims, reported back the bill without amendment, with a recommendation that it be passed. There was, also, at the same time an adverse report from the minority, (see Report No. 646; also, Journal H. R., p. 1098, and Cong. Globe, p. 3035.) There was no further action on the claim during the Thirty-sixth Congress. All this transpired *prior* to Mr. Dickins's death.

The war coming on, no further action was had until the Fortieth Congress, when it was revived, and has been pending ever since. A bill was presented to the House of Representatives at the present session, referred to the Committee on Claims, a favorable report made, and on the 14th of the present month the bill passed the House without a division, and is now pending in the Senate, awaiting its action. This bill provides for the payment of \$3,976.19. Your minority believe this is not the correct amount. It should be \$3,385.15, as hereinbefore stated.

The minority of your committee, therefore, feeling bound by law and precedent, would respectfully suggest the accompanying bill as a substitute for Senate bill No. 171, and recommend its passage:

A BILL for the benefit of the legal representatives of Asbury Dickins, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be paid to the legal

representatives of Asbury Dickins, deceased, out of any money in the Treasury not otherwise appropriated, the sum of three thousand three hundred and eighty-five dollars and fifteen cents, it being the difference between the salaries of the Secretary of the Treasury and the Secretary of State and chief clerk of those Departments for the aggregate periods of time that the said Asbury Dickins acted as Secretaries aforesaid under pro-tempore appointments by the President of the United States.

J. H. MITCHELL.
A. S. MERRIMON.
D. D. PRATT.

11

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY NATHANIEL BENTLEY
VOLUME I

1704

10

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1874.—Ordered to be printed.

Mr. PRATT made the following

REPORT:

[To accompany bill S. 496.]

The Committee on Claims, to whom was referred the memorial of T. T. Garrard and others, proprietors and lessees of salt-works near Manchester, in the State of Kentucky, praying compensation for the destruction of their salt and injuries committed upon their works by the troops of the United States, in the year 1862, submit the following report:

Near Manchester, in Clay County, in the State of Kentucky, upon Goose Creek and its tributary waters, were several salt-wells, with the necessary fixtures for pumping, conducting, and boiling the water, and storing the manufactured salt. The country round about was mountainous, and the people, with few exceptions, loyal. Because of their loyalty they had been plundered by the rebel army of their property and crops, and reduced to a destitute condition. Salt in large quantities was manufactured here, and the confederate forces in the South and Southwest supplied their wants from these works. Several thousand bushels of salt had accumulated in the fall of 1862. The confederates had carried away between 3,500 and 4,000 bushels previously, and on the 21st of October, 1862, General Buell had reason to believe that the rebel authorities purposed to capture and appropriate the large supply then on hand. On that day he issued his order, from his headquarters at Crab Orchard, to Major-General Thomas, second in command, directing that certain divisions be sent forward promptly to destroy the salt-works about Manchester. This order was carried out by Brigadier-General Craft, commanding Twenty-second Brigade, Fourth Division, who made his report on the 25th of October. From this and the reports of Colonels Enyart, Hanson, and Spencer, the following facts appear:

The works, consisting of five in number, were situate, owned, and occupied as follows:

The first was owned and occupied by Col. T. T. Garrard, and situate on the main fork of Goose Creek, two miles from Manchester. The second, third, and fourth were situate on Collins's Fork of the creek, within three miles of the above town, and were respectively owned and occupied as follows:

The second, by Mrs. J. T. Woodward and her daughter, Mrs. Mollie Shackelford, and was rented for the years 1862 and 1863 by James W. Reid, by whom they were occupied.

The third was owned by A. T. White, Michael Horton, and Daniel Gara, sr., (meaning Daniel Garrard.)

The fourth was owned by Alexander White and by Mrs. Woodward and her daughter, as above, and was occupied by Stephen Gibson and A. Chastain.

The fifth was owned and occupied by J. & D. White, and was situate on the east fork of Goose Creek, five miles from Manchester.

These works were furnished with water from bored wells, from 500 to 600 feet in depth, and were in good order, in full operation, each turning out daily from 50 to 100 bushels of salt.

Five hundred men engaged in the sad work of destroying these useful and expensive works, under the order above given, and for thirty-six consecutive hours the work of destruction went on. The wells and pumps upon which the works depended for supplies of water to manufacture the salt were rendered useless and unfit for service as far as it was possible in that space of time to do it; so, also, of the pipes conveying the water. In each case the pumps, or portions of them where they could not be gotten out entirely, were taken out of the wells, broken to pieces, and the pieces forced back into the wells, into and upon the pipes. In one case a piece of iron grate was driven into that part of the pump which could not be got out of the well. In another case an iron bar was forced down into the well and into the well-pipe, and 300 feet of the surface-pipe were destroyed. In another case cannon-balls were forced into the wells; the scaffolding, a large part of the wood-work of the pans, and all the surface-pipe were destroyed.

Large quantities of salt were destroyed. Taking the wells in the order above named, the officers charged with the destruction estimated the quantities destroyed as follows:

At	Bushels.
Number 1	5,840
Number 2	5,000
Number 3	2,000
Number 4	8,000
Number 5	9,000
Total	29,840

This was the best approximate estimate they could make, having no experience in the measurement of salt, and trusting to parties interested and such others as happened to be present to aid them in coming to a conclusion.

The loyal citizens in the neighborhood were allowed to remove what was necessary to supply the country round about; the remainder was destroyed by turning the water from the cistern upon it, and by throwing the salt into the pools and streams of water convenient. No considerable amount was left to fall into the hands of the rebels.

General Craft acted under the immediate command of Brig. Gen. William Lovy Smith, whose report was before the committee. From this it appears that the above officers, under whose supervision the salt-works were destroyed, were constituted a board to fix the value of the injury inflicted, and the damages, present and prospective, caused to the owners. They did not fix the money-value, and hence General Smith recommended that a competent commission be appointed to take the necessary testimony and assess the damages. General Craft uses this language:

I recommend that a special commission or commissioner be appointed by the Government of the United States to repair to the works and take evidence as to the quantity and price of the salt destroyed, the permanent damage to the works, and the amount of any remote or consequential damage that may ensue to the owners or lessees from the stoppage of their manufactories.

These recommendations were acted upon at an early day, for we find that on the 16th day of February, 1863, the Adjutant-General, by order of the Secretary of War, made the following order :

Ordered that William P. Thomasson, esq., of Louisville, Ky., be, and he is hereby, authorized to investigate and report to this Department the value of Goose Creek salt-works destroyed by the order of Major-General Buell, in Kentucky ; that he give notice to the proprietors or their agents of the time and place at which he will receive testimony, and that he take such further testimony on the part of the Government as may be necessary to protect the rights and interests of the Government, as well upon the point of value as of the loyalty of the proprietors to the Government of the United States.

It will be noticed in this order that Mr. Thomasson was commissioned to investigate the value of the salt-works destroyed, and the political sentiments of the proprietors.

On the 27th day of April, 1863, the commissioner proceeded to execute his trust, and on the 13th of May following he submitted his report to the Secretary of War, with the statements of the different witnesses examined. There was a sixth case considered by him, not embraced in the reports of the officers—that of James White and Dougherty White, survivors of Claiborne—James and Dougherty White *against* The United States.

The following is the schedule of the claims, as allowed by him for injuries done to the salt-works, according to the testimony taken before him. It will be noticed that he goes beyond the terms of his commission in estimating the value of the salt destroyed, as well as the loss of profits from the stoppage of the works for eight succeeding months, to the 23d day of June, 1863.

CASE No. 1.

UNITED STATES TO T. T. GARRARD,	Dr.
For injury to well, pump, pipe, &c	\$500 00
For 124 salt-barrels, at 40 cents each	49 60
For 6,300 bushels of salt destroyed, at 50 cents per bushel	3,150 00
For deterioration of furnace and fixtures by non-usage	500 00
For 19,200 bushels salt, the anticipated yield for eight months, at 50 cents..	9,600 00
Total	13,799 60

The claimants demanded for these injuries \$22,749 60.

CASE No. 2.

UNITED STATES TO JAMES W. REID,	Dr.
For injury to well, pump, pipe, &c	\$500 00
For 5,000 bushels salt destroyed, at 50 cents	2,500 00
For deterioration of furnace and fixtures	500 00
For 11,200 bushels salt, the anticipated yield for eight months, at 50 cents..	5,600 00
Total	9,100 00

The claim was for \$15,400.

CASE No. 3.

UNITED STATES TO WHITE, HORTON & GARRARD,	Dr.
For injury to well, pump, pipe &c	\$500 00
For 2,000 bushels of salt destroyed, at 50 cents	1,000 00
For deterioration of furnace and fixtures by non-usage	550 00
For 16,000 bushels salt, the anticipated yield for eight months, at 50 cents..	8,000 00
Total	10,050 00

The claim was for \$16,050.

CASE No. 4.

UNITED STATES TO GIBSON & CHASTAIN,	Dr.
For injury to well, pump, pipe, &c	\$500 00
For 8,000 bushels salt destroyed, at 50 cents	4,000 00
For deterioration, by non-usage, of furnace and fixtures	500 00
For 9,600 bushels salt, the anticipated yield for eight months, at 50 cents ...	4,800 00
Total	9,800 00

The claim in this case was for \$16,900.

CASE No. 5.

UNITED STATES TO J. & D. WHITE,	Dr.
For injury to wells, pumps, pipes, &c	\$1,000 00
For injury to water-pipe, furnace, &c	1,000 00
For 9,000 bushels salt destroyed, at 50 cents per bushel	4,500 00
For deterioration, by non-usage, of furnace and fixtures	550 00
For 20,000 bushels salt, the anticipated yield for eight months, at 50 cents..	10,000 00
Total.....	17,050 00

The claim made was for \$28,350.

CASE No. 6.

UNITED STATES TO J. & D. WHITE, SURVIVORS,	Dr.
For injury to well, pump, and pipe.....	\$500 00

The claim as made was \$650.

The committee have examined the testimony taken by the commissioner, and certainly his conclusions as to values and damages seem fully justified by the evidence. The mode by which the anticipated profits were estimated by the witnesses was to calculate the capacity of the wells for production by the week or month, and deduct the cost of operating the works.

Thus, in case No. 5, Mr. Raines says that, judging from the quality of the water, the situation of the furnace, the convenience of fuel, and the quantity of the salt sold at the works and shipped, he supposes they would produce 2,500 bushels per month, worth \$1 per bushel, while the works could be run at a monthly cost of \$400. Generally the estimates of the witnesses proved the cost of the production to bear the relation to the product of from one-fourth to one-third.

During the preceding five years the price of salt at the works had varied from 35 cents to \$1 per bushel. A combination among the manufacturers had existed for some years, which prevented competition and established a uniform price for all the salt produced at the different wells.

The estimates of profits are, of course, based upon the assumption that the proprietors or lessees could and would have manufactured the quantities stated; that no interruption of the peaceable pursuit of their business would have occurred; that there would have been a demand for all their salt and the old prices maintained. No allowance is made for contingencies, not even those of war, although their works were situate in a region of country traversed by both armies; although the signs were recent of the disastrous retreat from Cumberland Gap of the army commanded by General Morgan, the earth being covered by the wrecks of abandoned property; although these very works had been visited by the enemy, and several thousand bushels of salt captured; although the loyal inhabitants of that region had been plundered of every description of property which the rebels could make available; although

it would seem next to impossible to collect in that disturbed region a sufficient body of men to operate the works.

Even as to the salt on hand, and which was destroyed by the troops, the claimants assume that this species of property would have been exempted from the common fate of all other in the neighborhood, while the very motive which prompted its destruction was the imminent danger that unless destroyed it would fall into the hands of the rebels and thus enable them to prolong the rebellion.

It becomes, therefore, an exceedingly complicated question to determine what should be the measure of re-imbursement to the claimants. If it be assumed that their property would have escaped appropriation or destruction by the rebels, that result could only have occurred by reason of the respect shown them by the confederates as friends of their cause. In this view of the question, they would be entitled to no compensation at all. If, on the other hand, it be assumed that their salt would have been appropriated by the enemy without compensation, then to that extent they have suffered no loss for which the Government should compensate them. We know that in point of fact the rebels had drawn their supplies of salt from these works, and were likely to continue to do so.

And then, again, we are not to lose sight of the main fact that all this destruction was committed not wantonly or unadvisedly, but as a means to an end, which end was the suppression of the rebellion, the restoration of peace, and the mild sway of law. The Government was spending two millions of money per day at that very time to bring around these desirable results for these claimants and all other citizens of the republic. Looking to these objects and to the end attained, may not the Government fairly interpose a claim of set-off to some extent, at least, for real benefits conferred? It is true these benefits may be said to be shared equally by others who were not losers; and therefore, in this view, those who were exempt from similar losses could well afford to pay those who were so unfortunate as to have their property and business upon the theater of strife. And this seems to the committee the more reasonable view of the question. While, therefore, they reject all allowances as made by the commissioner for prospective profits, they are of opinion petitioners should be paid for the injuries done the salt-works, and for the salt actually destroyed. They accordingly allow—

In case No. 1, to T. T. Garrard	\$4,199 60
To James W Reid, in case No. 2	3,500 00
To White, Horton & Garrard, in case No. 3	2,050 00
To Gibson & Chastain, in case No. 4	5,000 00
To J. & D. White, in case No. 5	7,050 00
To the same, survivors, as above, case No. 6	500 00
	22,299 60

These are the allowances made to the claimants in his report, and embrace all the items save that for the prospective yield and profits of the works.

The committee file herewith, for the information of the House of Representatives, Ex. Doc. No. 29, 38th Congress, 1st session, which embraces all the papers to which the committee have had access in the examination of these claims, and which seems to be a correct copy of the papers on file in the War Department.

The order appointing the commissioner authorized him to investigate and report to the War Department "the value of the Goose Creek salt-works, destroyed by order of Major General Buell, Kentucky."

The report goes beyond the letter of the authority, unless the accumulated salt be regarded as part of the works. If that item be left out, the amount of damages found to have been done to the owners by strict construction of the order is as follows :

Case No. 1.....	\$1,049 60
Case No. 2.....	1,000 00
Case No. 3.....	1,050 00
Case No. 4.....	1,000 00
Case No. 5.....	2,550 00
Case No. 6.....	500 00
Total.....	7,149 60

Value of the salt destroyed, \$15,150.

But the committee are of opinion that the same principle governs the destruction of the salt on hand which governs the injuries done to the salt-works. If the petitioners are entitled to relief in the one case they are in the other. They should be paid the whole or nothing.

In relation to the question of the loyalty of the claimants, the commissioner found they were all believed to be loyal, except Col. Daniel Garrard, (of the claimants White, Horton & Garrard.) He was 83 years of age and took no pains to conceal his southern proclivities. But as he was the father of Brig. Gen. T. T. Garrard, of the Federal Army, and of Col. James H. Garrard, treasurer of the State of Kentucky, both true and loyal men, the commissioner was of opinion that the virtues of the sons should overshadow the follies of the father.

The majority of the committee, however, are of opinion, that from the foregoing allowance in case No. 3 of \$2,050 to White, Horton & Garrard, there should be deducted one-third, or the sum of \$683.33, on account of the disloyalty of Daniel Garrard, a member of the firm, reducing the allowance in that case to \$1,366.67 and reducing the sum total of the allowances from \$22,299.60 to \$21,616.27, and they herewith report a bill accordingly and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1874.—Ordered to be printed.

Mr. DAVIS submitted the following

R E P O R T :

[To accompany bill S. 53.]

The Committee on Claims, to whom was referred the bill (S. 53) for the relief of Mary E. Purnell, have considered the same, together with the papers submitted therewith, and make the following report :

The claimant urges that she is the widow of the late Dr. George W. Purnell, who died in 1862 ; that in June, 1863, she lived in the parish of East Feliciana, in the State of Louisiana, and was possessed of a plantation known as Avondale, on which she resided ; that some time in the early part of that month a detachment of Federal troops, acting under orders of General H. E. Paine, came to her plantation and seized three hundred bales of cotton, which had been raised on her plantation, and was the result of the crops of the years 1861 and 1862 ; that said cotton was of the average weight of 450 pounds per bale, ranked as middling in quality, and at that time was worth and was selling at sixty cents per pound ; that said cotton was hauled away in Government wagons, and used in the construction of breastworks and batteries in the Union lines of investment at Port Hudson, in said State, at a point near the Clinton and Port Hudson Railway ; that after the fall of Port Hudson the cotton used in said lines of investment was gathered up, repacked, and turned over to the Quartermaster's Department, taken to New Orleans, there sold, and the proceeds applied to the expenses of organizing and equipping the Corps d'Afrique, in compliance with special orders from Major-General Banks, directed to Col. S. B. Holabird, chief quartermaster of the Department of the Gulf ; that Lieut. D. W. Bradshaw, of the Seventh Regiment of Illinois Cavalry, who commanded the detachment of troops who seized the cotton, gave her a receipt for 244 bales of cotton, and that she placed this receipt in the hands of an agent, one Thomas F. Purnell, in 1866, with instructions to institute such proceedings as might be necessary to recover the value of her cotton, but that said agent failed to institute the proper action in the Court of Claims before the State of Louisiana barred such action ; that she has never received payment for said cotton, or any part thereof ; that she was loyal to the United States Government during the whole of the late rebellion ; that she now resides at Jefferson, in the State of Texas, is destitute, and depends on her son-in-law, with whom she lives, for support.

The bill asks that her claim "may be submitted, within six months after the passage of this act, to the Court of Claims, under and in compliance with the rules and regulations of said court, and that said court shall have jurisdiction to hear and determine and render judgment upon

the same for such amount as shall be found to have been the actual value of said cotton when so used."

For the reasons that the bill is unsupported by any legal evidence, documentary or otherwise, by which the justice or authenticity of the claim can be determined on, and that, even admitting the affidavits and other offered proof to be in proper and legal form and properly certified, the evidence is insufficient in two important points, to wit, that of the loyalty of the claimant to the United States Government during the war, and that of the Government of the United States having received the proceeds of the specific cotton alleged to have been taken and sold, the committee recommend indefinite postponement of the bill, and that the claim ought not to be allowed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

[To accompany bill S. 508.]

The Committee on Claims, to whom was referred the petition, accompanying affidavits, certificates, and other papers of Andrew Johnson, of Logansport, in the State of Indiana, have had the same under consideration and beg leave to report:

The petitioner and one Dantler were distillers under the internal-revenue laws of the United States, in the county of Cass in said State, at intervals from the 1st day of September, A. D. 1862, until the 23d day of October, A. D. 1866; the petitioner owned the still and fixtures, and the land on which the same were situated; the distillery was a small one; the distillers were very simple business men, unaccustomed to accounts and business habits; they inadvertently but honestly failed to report to the proper, or any internal-revenue officer, or authority, that they had made and sold, prior to the 1st day of January, A. D. 1865, 215.85 gallons of spirits, but they afterward so reported; the revenue officer insisted that because they made report after the last-mentioned day and date they were liable to pay a tax of two dollars per gallon on account of said spirits, besides the forfeitures imposed by law for such neglect; the petitioner insisted that he was not so bound, but paid such tax and forfeitures under protest, the whole amounting to \$409.19.

If the said distillers were liable at all, their liability was technical, and it appears that they were very plain, simple business men, and the committee think they behaved honestly about the matter. They think, therefore, the said sum of money ought to be refunded to the petitioner, he having paid the same. The committee, therefore, report back the accompanying bill, and recommend that the same be passed.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1874.—Ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

[To accompany bill S. 507.]

The Committee on Claims, to whom was referred the petition of Thomas B. Wallace, praying compensation for his dwelling-house and its contents, destroyed by order of Col. James A. Mulligan, in command of the United States forces at the city of Lexington, Mo., on the 13th of September, 1861, has had the same under consideration, and submits the following report :

This claim was before the Forty-second Congress upon a bill (S. 569) and petition for the relief of Mr. Wallace. It was then considered, and a favorable report made, (No. 124.) That report is again adopted by the committee, and is as follows :

The city of Lexington, Mo., was attacked by the rebels, under command of Gen. Sterling Price, on the 12th of September, 1861. Col. James A. Mulligan was in command of the United States troops defending the city.

The dwelling of Mr. Wallace is shown to have been a first-class brick house, 50 feet in front, with back-buildings extending 80 feet in depth, with out-buildings and improved grounds, handsomely furnished, and containing a valuable library. It stood so near the line of intrenchments that, upon the first day of the battle, (12th September,) the rebels filled it with sharp-shooters, and from it picked off the gunners and killed men in our lines. The rebel artillery was stationed so near it that some pieces were loaded behind it and brought out to be fired during the battle, which lasted from early in the evening until dark of the 12th.

That night they were driven from the house. Mr. Wallace, who is shown to have been an ardent Union man, immediately came within the Union lines, gave information that was of value to the commanding officer, and assisted, with his family, in collecting and caring for our wounded soldiers.

The next morning a council of officers was called, and decided that it was necessary, to prevent it from being again used for the same purpose by the enemy in an apprehended renewal of the attack, that the house should be destroyed. Colonel Mulligan gave an order to that effect, and it was immediately carried out by burning the house and its contents, no time being given for their removal.

These facts are established by the testimony of Hon. R. P. Van Horn, recently a member of the House of Representatives, who was a major in Colonel Mulligan's command during the battle, and testifies to his personal knowledge of the facts; of Lieut. Oliver P. Newley, who was in command of the party that fired and destroyed the house; of Richard Eaghan, who was in the trenches during the siege; and of John F. Tyler, a citizen of Lexington.

The loyalty of Mr. Wallace is also established by these witnesses, and he seems to have acquiesced, as a patriotic citizen, in the propriety and necessity of sacrificing his property to protect and save our troops. It is but just he should be paid.

The house is estimated as being worth at least \$7,000, and a schedule of the library and other contents of the dwelling estimates them at \$4,252.

We recommend the passage of an act so amended as to give him the sum of \$11,252, instead of \$18,500, the amount now named in the bill.

Upon this report the bill passed the Senate and the House, and was vetoed by the President, who referred for his reasons to the message vetoing the act for the relief of J. Milton Best. These cases were considered together by the Committee on Claims of the Forty-second Congress, and a report was made in the case of J. Milton Best, recommending the passage of the bill, notwithstanding the reasons given by the President for his veto, and the committee now refers to its report in that case as embodying the views which have influenced them in again reporting the accompanying bill and recommending its passage.

C

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Claims, to whom was referred the memorial of A. M. Wilson, praying compensation for property taken, used, and enjoyed by the military forces of the United States, submit the following report :

The memorialist submits the following statement of facts :

1st. That he is a Cherokee Indian by birth.

2d. That he is now fifty-four years of age, and made his home in the Cherokee Nation from the date of his nativity until July, 1862.

3d. That he married a native Cherokee, who died near Fort Gibson, March, 1862, and that he has three children by first and second marriages, the oldest of whom is nine years of age.

4th. That he is now, as he has been in the past, faithful to the Government of the United States, its Constitution, treaties, and laws, and never having engaged in rebellion against the same.

5th. That he was a resident of the said nation at the beginning of the rebellion, and remained there until July, 1862, at which time he fled, leaving in the nation, at Mackey's Salt-Works, near Fort Gibson, the following property, of which he was legally possessed.

Mansion house	\$1, 000
Furniture	500
Books	500
Growing crop	1, 000
Blacksmith shop, iron material, tools, &c	1, 000
Ten road-wagons	1, 000
Two hundred head of hogs	750
Twenty-five horses and mules	2, 500
Forty oxen	1, 000
One hundred and fifty head of cattle	1, 500
Salt-works, kettles, cord-wood	2, 500
Dry-goods in store	2, 000
Salt on hand	1, 000
Total	45, 750

6th. That the said property, in the aggregate, was worth \$45,750.

7th. That in the month of July, 1862, on account of threatened danger to his person, and because there was no protection offered him, he fled from his home, leaving said property at and near his residence, at Mackey's Salt-Works, near Fort Gibson.

8th. That he refused to take up arms and join in rebellion against the Government of the United States ; that by reason thereof many of those

engaged in insurrection and rebellion became highly incensed, and denounced memorialist as a coward and Union man.

9th. That most of the property aforesaid, as were the Mackey Salt-Works, after memorialist fled, was taken, used, and enjoyed by the military forces of the United States, as memorialist is informed and believes.

10th. That the property aforesaid, of the value aforesaid, was a total loss to him.

11th. That without any fault of his, never having violated the Constitution, treaties, or laws of the United States knowingly, he is left penniless.

In consideration of the premises, he prays that the Government, at least to some extent, re-imburse him in his losses.

The memorial is signed by the memorialist, and sworn to before the clerk of the district court of Marion County, Texas, on the 21st day of May, 1870—and additional evidence is submitted in the affidavit of one J. G. Scarborough, of Little Rock, who testifies that he is personally acquainted with Dr. A. M. Wilson, the memorialist, and that the statement as to items 1, 2, 3, 4, 7, 8, and 10 are true, as stated in the memorial, which he has carefully read, and that he believes the other items to be true, as stated, and that he is disinterested.

Also, the affidavit of William Wilson, a resident of the Cherokee Nation, who states that he is personally acquainted with Dr. Wilson, the memorialist, and that of his own knowledge items 1, 2, 3, 4, 5, 6, 8, 9, 10, and 11 are true, as stated in the memorial, which he has carefully read, and that he is disinterested.

Also, the affidavit of Richard H. Lewis, a resident of Marion County, Texas, who states that he has carefully read the memorial of Dr. A. M. Wilson, and that the same contains true statements of fact, according to his knowledge, *so far as it goes*; that the property described was in his possession when the Federal troops came; that the same property and much more was taken possession of by General Eagin's troops, the general being in command of cavalry; that one Captain Williams, of Wisconsin, took possession of the goods named, and also took affiant prisoner and carried him to Talaqua, and that he treated him kindly.

This is all the proof which accompanies the memorial. This is all we have in support of this claim for \$45,750.

What does it amount to on the first proposition to be made out affirmatively by the petitioner, that he was thoroughly loyal to the Government of the United States during the rebellion—that he lent no aid by speech or deed to the rebels? Who are his witnesses? Were they loyal or disloyal during the war? Are they men of good or bad character? Would they be believed at home? Have they stated the truth, the whole truth, and nothing but the truth? No such oath seems to have been administered. As to one of them, the venue where his affidavit was made does not appear.

Then again, upon the main facts, what proofs have we before us? Was this property taken by authority of any officer qualified to issue such an order? For what purpose was it taken—for the use of the United States or to prevent its falling into the hands of the enemy? Was it taken for quartermaster or commissary stores, and actually used as such; and if so, to what extent? Did its appropriation to some extent relieve the officers, whose business it was to procure supplies for the Army, from purchasing them elsewhere; if so, to what extent? What use was made of the mansion house? How did it come to be burnt down? To what extent was the loss of the memorialist due to the tor-

tious acts of private soldiers, acting without authority? Upon all these points we are without light.

We know, as matter of fact, that the Indian Territory was enemy country; that a large portion of the Cherokee Nation was hostile to the United States, and in the early part of the war, and indeed until after the battle of Pea Ridge, engaged with the enemy in war upon the United States. It is also true, and to their credit, that three regiments of loyal Indians were organized in this Territory and contributed to put down the rebellion.

Again, if the memorialist was, as he claims to have been, loyal to the United States, and gave such hearty manifestations of his sentiments as to draw upon him the odium of his rebel neighbors; if, as he claims was the case, he was compelled to flee from his home on account of threatened danger to his person, and because of his loyalty, and because there was no protection offered him, may we not, without straining a point, infer that his rebel neighbors took possession of his abandoned property and destroyed or appropriated it; for it will be observed that he lays emphasis in his memorial—that he fled from his home because there was no protection offered him. Who did he flee from? Not the Union Army, because he pretends to have been its friend. If he fled from his rebel enemies, it was because they were near at hand and equally as capable of inflicting injury upon his property as upon his person.

But could we surmount this difficulty, and conclude that Dr. Wilson was entitled to some relief, we should be utterly at a loss to determine its measure. Where is the proof that his house was worth just \$1,000, no more no less, his furniture \$500, his books \$500, &c., and how, counting up all the items of his loss at his own valuation, does he make the sum total \$45,750? We can make only \$16,250 by our footing up of the items.

There is some peculiarity in the language his witnesses employ. Take, for example, Mr. Lewis, the last one. He swears that the memorial contains true statements of facts according to his knowledge, so far as it goes. But how far does that knowledge go? Where does it begin and where does it end? He says that the property described was in his possession when the Federal troops came. But what was its condition and value at that time? How far had it been spoiled by the enemy? He says that the troops took possession of the property, but what was the form of possession, and how long did it last? Was it an unlicensed possession by the troops, each man taking what suited his fancy, or was it taken possession of by authority of an officer, and turned over by his direction to the quartermaster or commissary department? Probably Mr. Lewis could not answer all these questions, because he says he was taken a prisoner and carried to Talaqua. But wherefore a prisoner and in bonds, if he was standing a faithful sentinel over this property, representing the loyal owner, who was absent? The loyalty of a character, distinguished as Dr. Wilson must have been, owning property worth \$45,000, and dwelling in enemy's country, must have been of that conspicuous character as to have sounded far and near, and been visible, like a great light, to the advancing army, whose pride and pleasure it would have been to mark their approbation of that scarce article by affording every possible security to his home and property.

Taking the case then as we find it, and forbearing to dwell further upon defects in the evidence, the committee ask to be discharged from further consideration of this memorial.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

The Committee on Claims, to whom was referred the petition of Jesse Connell and Barrett S. Johnson, praying compensation for corn delivered under a contract with the United States, submit the following report.

It appears that a contract was entered into at Fort Leavenworth on the 10th day of October, 1862, between Major Easton, quartermaster, United States Army, for and on behalf of the United States of the first part, and the petitioners of the second part. By it they agreed to deliver at Fort Leavenworth 100,000 bushels shelled corn, of the best quality and well sacked, 15,000 bushels of which were to be delivered on or before the 1st day of November, 1862, and the remaining 85,000 bushels by the 1st day of January, 1863, the corn to be subject to the inspection, acceptance, or rejection of the department quartermaster at Fort Leavenworth, or his agent, upon the delivery of the same, at the time, in the manner, and according to the conditions specified in the contract.

The petitioners were to be paid at the office of the quartermaster at Fort Leavenworth the sum of $38\frac{1}{5}$ cents for each and every bushel of corn delivered and accepted in accordance with the terms of said contract, or as soon thereafter as the quartermaster should be supplied with funds from which such payment could be made.

We have stated the terms of the contract from a paper purporting to be a copy, which accompanies the petition.

The petitioners allege that they proceeded in good faith to purchase and deliver said corn, and actually did deliver to the agent of Major Easton at Fort Leavenworth 625,280 pounds of corn, equal to $11,165\frac{4}{5}\frac{9}{16}$ bushels, allowing 56 pounds to the bushel; that this forage was duly taken up and accounted for in the regular returns of Major Easton for the month of October, 1862, as property purchased, and not paid for, from the petitioners, to the amount of \$4,265.30.

The petitioners further allege that they entered into this contract in perfect good faith, and that, agreeably to the prevailing prices at the time in the vicinity of Fort Leavenworth, they could have furnished the entire 100,000 bushels without loss to themselves; but that, owing to the increased demand for Army purposes, and the consequent enhancement in value of all kinds of grain, and especially corn, they found, after delivering the said $11,165\frac{4}{5}\frac{9}{16}$ bushels, that further supplies could not be purchased except at rates largely in excess of their contract price, and by continuing to deliver corn at $38\frac{1}{5}$ cents per bushel they would bring

utter ruin upon themselves; and being unable, for the reasons stated, to make further delivery at the price named, they asked payment for the amount furnished and to be relieved as to the balance; which payment was refused.

The petitioners, by way of argument, lay stress upon the clause in the contract that they should be paid for each and every bushel of corn delivered and accepted.

They further claim that the contract contains no provision to the effect that if the entire amount of corn (100,000 bushels) was not delivered, the contractors should forfeit the amount actually furnished. Such, they say, was not their understanding, but their belief was that they would be paid at the rate specified for each and every bushel delivered and accepted.

It will be seen upon the showing of the petitioners themselves that they have failed to deliver 89,834 bushels of corn. What this was worth in market at the time it should have been delivered at Fort Leavenworth according to the contract does not appear. The presumption is that, as the United States required 100,000 bushels of corn, they had to supply the deficiency at an increased cost. If this increased cost was less than the sum of \$4,265.30, earned by the contractors, the petitioners were bound to allege that fact, because the difference was fairly theirs.

The contract was an entire one. The contractors were bound to deliver the entire 100,000 bushels, a part at one time, the remainder at another. Supposing that the quartermaster had paid them at the time of delivery, for the quantity delivered, the sum now claimed to be their due, it is a very clear proposition that the United States would have held the contractors responsible for the damages sustained in consequence of the non-delivery of the remainder. If those damages amounted to as much as the sum of \$4,265.30, then the United States would have recovered back from the contractors all the money paid, and the parties would be placed in the very condition they now occupy in relation to each other.

We do not think the contract required that the money should be paid as the corn was delivered. Two periods were fixed for its delivery. If we adopt the theory of the petitioners, it is not clear that any payment would have been due until the first 15,000 bushels was delivered. In point of fact, that quantity was never delivered. But the contract is that payment was to be made only after acceptance of the corn, and after the paymaster was supplied with funds.

We are of opinion that the United States has a valid counter-claim against the contractors, in consequence of the violation of their contract, to the extent of the damages sustained in consequence of its breach. If these damages do not amount to as much as the sum retained by the United States, the petitioners should have alleged that fact. We have a right to infer, from the silence of the petition on this head, that the United States have been the losers in this transaction. The committee therefore ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1874.—Ordered to be printed.

Mr. MITCHELL submitted the following

REPORT:

The Committee on Claims, to whom was referred the claim of Henry A. Peeler, having considered the same, respectfully report:

That the statement of the petitioner, now a resident of New Orleans, La., sets forth that in the years 1860, 1861, 1862, 1863, and 1864 he resided in the city of Matamoras, Mexico; that in order to aid destitute loyal men from Texas to join the United States Army in New Orleans, (who crossed over from Texas into Mexico, so as to get to the Union lines,) upon the request of Leonard Pierce, jr., then United States consul in Matamoras, he, in the fall of 1862, furnished between \$16,000 and \$17,000 in specie to the consul, taking his receipts therefor, who expended this money for clothing, provisions, and quarters for such loyal refugees, and who sent the refugees to New Orleans, where they joined the command known as the First and Second Texas Cavalry, United States Army.

That the consul represented that the United States would reimburse the petitioner, and that he (the consul) had been addressed a letter by Major-General Butler, then in command in New Orleans, stating that he (Butler) would see that the money so advanced was refunded on demand.

That in the year 1864, the petitioner applied to Major-General Banks to refund this money, and submitted to that officer all his proofs and papers touching the money advanced to the consul, but that no action was ever taken by General Banks in the matter.

The only proof submitted with the petition is an affidavit of Charles A. Harrison, who testifies that he was one of the refugees, and that they numbered altogether some seventy-five men; and that, with one or two exceptions, they all enlisted in the United States Army on their arrival at New Orleans. But he testifies more upon information and belief than from personal knowledge that the petitioner furnished any money to the consul, and the amount he does not pretend to state.

Your committee find, admitting the facts in the petition to be true, that the money advanced by the petitioner was a voluntary contribution, for a repayment of which the United States, under the circumstances, are neither legally nor morally liable. They further find that, even were this otherwise, the proofs submitted are wholly insufficient to support the averments of the petition. Your committee therefore report that the claim should not be allowed, and recommend that the report be adopted.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1874.—Ordered to be printed.

Mr. SCOTT submitted the following

R E P O R T :

The Committee on Claims, to whom was referred the petition of P. W. Whitcomb, praying compensation for services rendered as a clerk of the first class, while employed as a laborer in the office of the Auditor of the Treasury for the Post-Office Department, from October 1, 1866, to April 1, 1872, have had the same under consideration, and present the following report :

The petitioner alleges "that he has been employed for the last seven years in the office of the Auditor of the Treasury for the Post-Office Department," for the first two of which "he was employed as a laborer by regular appointment at a laborer's pay—\$60 per month;" "that during the last five years and a half he has regularly and faithfully performed the duties *in kind* of a regular clerk, at a regular clerk's desk, by order of the Department, in addition to performing the duties of a laborer before and after office-hours; and also the duties of a clerk before, after, and during office-hours, and that he has received only laborer's pay."

He further states his impression that "aside from legal considerations why the additional pay was not awarded him by the Department, the personal feelings of the chief clerk operated to prevent his getting his full pay," and he now asks the pay of a clerk of the first class from October 1, 1866, to April 1, 1872.

The act of Congress of August 26, 1862, (sec. 12, 5 Stat., 525,) is a sufficient reason why he was not paid as clerk, as well as a vindication of the chief clerk upon the imputation of personal motives for the refusal.

But a case exhibiting such remarkable industry as that stated in the petition induces us to inquire whether it is sustained by evidence. The evidence is totally lacking. It consists of the certificate of his appointment as laborer October 21, 1864; of a certificate dated August 4, 1872, of William Little, a first-class clerk in the Sixth Auditor's office for two years, stating that during that time P. W. Whitcomb, in addition to his duties as a laborer, performed duties of the same character as those allotted to him, (Little,) namely, examining postmasters' accounts, and that he was at all times prompt, attentive, industrious, and efficient, and that he is of opinion that advantage was taken of Mr. Whitcomb by obliging him to do this extra work; and further, that "the superintendent of the room kept it in such an extreme condition of artificial heat as to render it oppressive and unhealthful to those therein employed;" a certificate of J. Record, M. D., as to finding the room in this high state of temperature during February and March, 1872. Several certificates of good character also accompany his petition.

Neither his petition, nor any of these other papers, is sworn to. No evidence is offered from any officer of the Department as to why a laborer was required to discharge these duties, or why, if during so many years he was efficient, he was not promoted, so that he could be paid for these services.

The claim is totally unsupported by any adequate evidence, and it ought not to be allowed. The committee ask that this report be adopted, and that they be discharged from the further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 429.]

The Committee on Public Lands, to whom was referred the bill (H. R. 429) creating an additional land-district in the Territory of New Mexico, submit the following report:

The bill creates a new land-district in the Territory of New Mexico, consisting of all that portion lying south of the principal base-line of the Territory, to be called the La Mesilla land-district, the land-office to be located at such place as the President may direct, with power on his part to change its site from time to time as the public interest may require.

The base-line crosses the Rio Grande about fifteen miles north of Socorro, and running east and west bisects the Territory into parts nearly equal; and as the townships are numbered north and south from this line, it is deemed a convenient one.

New Mexico contains 121,201 square miles and embraces an area of 77,563,640 acres, and therefore exceeds that of the State of Ohio more than three times. The surveys already made embrace $9\frac{1}{2}$ million acres, nearly one-half of which consists of confirmed private land-grants.

The townships subdivided amount to 3,689,494.29 acres. The remaining surveys embrace Indian and military reservations, mining, mill, and town-site claims. The area remaining unsurveyed at the date of the last report of the surveyor-general of the Territory was over sixty-eight million acres.

In all this vast territory there is but one land-office, and that is located at Santa Fé, on the Rio Grande, in its northern part. In the southern part of the Territory, and bordering that river on each side, about 130 townships have been surveyed. While the business transacted at the existing land-office has been small, the Commissioner of the General Land-Office says, in a letter to the committee, that the greater portion of it comes from that portion of the Territory embraced in the limits of the proposed new district. He further says that the surveys in New Mexico are, as a rule, in detached bodies, and many of the settlers are compelled to travel a distance of two, three, or even four hundred miles, and their convenience would be subserved by the creation of the proposed district; though looking to the amount of business heretofore done, he does not recommend its establishment, on the score of the increased expense to the Government.

In the opinion of the committee, however, there are public reasons in favor of this measure which outweigh the expense, some of which the committee proceed to state:

The people of this Territory were made *de facto* citizens of the United

States by the proclamation of the 18th day of August, 1846, made by General Kearney, absolving them from their allegiance to the republic of Mexico. On the 2d day of February, 1848, by the treaty of Guadalupe Hidalgo, New Mexico became a part of the territory of the United States, subject to its Constitution and laws, and, under the 8th and 9th articles of the treaty, most of the citizens of Mexico then residing in the Territory became citizens of the United States, and they and their descendants still reside there. The limits of the Territory were enlarged in 1853 by a further treaty with Mexico, by which a large tract of country was acquired, known as the "Gadsden purchase." Subsequently, in 1863, the western portion was erected into a new Territory by the name of Arizona.

In New Mexico proper, and within the limits of the new land-district, five counties have been organized, containing a population made up of Americans, Englishmen, and Mexicans, of above 40,000 souls.

This distant part of our possessions has been and still is difficult of access by reason of its removal from existing thoroughfares of travel. But four railroads, pointing to the Territory, and ultimately to penetrate it, are in process of construction. These are the Texas and Pacific, running along the thirty-second parallel of latitude; the Atlantic and Pacific Road, on the thirty-fifth parallel; the Atchison, Topeka and Santa Fé Road; and the Denver and Rio Grande Road, now running to Pueblo, Colorado, with a branch running to Cañon City.

The surveyor-general, in his last report to the Commissioner of the General Land-Office, speaks in glowing terms of the great mineral wealth of the Territory, consisting of gold, silver, copper, lead, iron, and coal deposits, which, as he says, have only to be known to the outside world to render that region as celebrated for mineral resources as any in the world. A good deal of capital has already been invested in mills, machinery, and mining operations generally in the vicinity of Silver City, in the southwestern portion of the Territory. Besides, the country is one well adapted to agriculture, grazing, and fruit-raising, and is blessed with a most salubrious climate.

The committee append, and make part of this report, a highly interesting letter to a member of the committee, written by the Hon. John S. Watts, who has lived in the Territory most of the time since 1851, and was at one time one of its associate judges. His long residence there, and the abundant opportunities he has enjoyed of making himself familiar with the topography, geology, capacities, and resources of the country, qualify him, probably, better than any living man, to speak with authority upon this subject.

But few years must elapse before this region, so rich in every natural quality to attract the attention and excite the cupidity of miners, and to draw to it that larger and more valuable class of citizens who seek to plant their homes where competence may be acquired with ease, where the earth makes generous returns, and the climate is of that dry, bracing, and salubrious character that disease is scarcely known, shall become a densely populated State. The Government should afford such facilities as are in its power to bring about this desirable end. The committee think the creation of this new land-district the first and most obvious step in that direction. It is in the line of our policy to promote the settlement of new districts of country, extend the acreage of our cultivation of the soil, and lend the pioneer every proper facility in founding his home in the wilderness.

The committee, therefore, recommend the passage of the bill without amendment.

EXHIBIT A.

WASHINGTON CITY, D. C.,
February, 1874.

SIR: In response to your kind verbal request of yesterday, I take much pleasure in giving you a statement of the facts in regard to House bill 429, introduced into the House of Representatives by the Hon. S. B. Elkins, Delegate in Congress, "creating an additional land district in the Territory of New Mexico."

The portion of the Territory of New Mexico proposed in the first section of the said bill, constituting the proposed separate land district of said Territory of New Mexico, to be called the Mesilla land district, south of the principal base line of the surveys of the Territory of New Mexico, first made in New Mexico under the eighth section of the act of 22d July, 1854, will place, as you will see by reference to the splendid map of the United States and Territories compiled under direction of the Hon. Willis Drummond, Commissioner of the General Land-Office, late in 1873, will place the southern portion, nearly half, of the present Territory of New Mexico in said Mesilla land-district, consisting of the counties of Socorro, Doña Ana, Grant, and Lincoln. In these counties the population, consisting of Americans and Mexicans, will number about forty thousand people, the majority of natives of Mexico and citizens of that republic. On 2d day of February, 1848, the treaty of Guadalupe Hidalgo placed the sovereignty of the United States over the then province of New Mexico, and under the operation of the eighth and ninth articles of said treaty, almost unanimously, the former citizens of the Republic of Mexico became *de jure* citizens of the United States, having been *de facto* citizens of the United States and annexed to the United States by the proclamation of General Kearney, who took possession of Santa Fé, the capital of New Mexico, on the 18th of August, 1846, and absolved the citizens of Mexico from all allegiance to said Republic of Mexico on the 18th August, 1846, as will be seen by President's Message, Mexican war, pages 168 and 170. (See for said treaty Statutes at Large, vol. 9, pp. 929, 930.)

The limits of the Territory of New Mexico were somewhat extended by the first section of treaty of the United States with the Republic of Mexico, made the 30th of December, 1853, commonly called "the Gadsden purchase." (See for this treaty, Statutes at Large, volume 10, page 1032.) Under these treaties the United States acquired within the limits of the Territory of New Mexico alone about 155 millions of acres of land, an area four times as large as the great States of either Ohio or Indiana. The Territory of Arizona, constituted and established February 24, 1863, by an act of Congress, to provide a temporary governor for Arizona, was composed of the western half of New Mexico, as will be seen by reference to the boundaries designated in the first section of said act. (See Statutes at Large, volume 12, page 664, 665, for the said act of organization of the said Territory of Arizona.) It will thus be seen that the present limits of the Territory of New Mexico contain an area of about seventy-seven millions of acres of land, and about half that quantity of acres, thirty-eight millions, would be included in the separate land-district called La Mesilla, as designated in the bill (H. R. No. 429) now before the honorable Senate of the United States for consideration and action. In regard to the character and pursuits of the people and an intimate personal acquaintance with the soil and agricultural resources, pastoral resources, and great mineral wealth of that portion of the Territory of New Mexico which my business and pleasure has taken me over from Santa Fé to El Paso, Texas, more than sixty times during my residence in Santa Fé, New Mexico, the lands constituting the proposed additional land-district in the Territory of New Mexico, I knew well, having left my former residence in Bloomington, Ind., in May, 1851, arriving at Santa Fé 20th of June, 1851, having been appointed associate justice of the supreme court of the Territory of New Mexico, on the organization of the Territory of New Mexico, 9th of September, 1850. (See Statutes at Large, volume 9, page 446, for organic act of the Territory of New Mexico.) Now, the valley of the Rio Grande from the base line down that river is rich and fertile, and such as is capable of being irrigated, from the waters of the Rio Grande, produces large quantities of corn, wheat, oats, and barley, vegetables in great abundance, cabbages, beets, parsnips, beans of a fine quality, and wagon loads of red pepper, greatly loved and extensively used in all New Mexico, and vineyards of sweet and delicious flavored grapes for table, or for pure and pleasant wine unsurpassed by any locality in this or the eastern hemisphere, not excepting for table use any grape as its superior in any part of the world. The land outside of these valleys is useful only for the abundant supply of a grass known as "gramma," furnishing all the year good and plentiful pasturage for the raising with certainty and cheapness large numbers of sheep, goats, cattle, horses, and mules and donkeys. Some owners of favorable "haciendas" number in their flocks of sheep over 100,000 head. Now let me briefly call your attention to the mineral resources of New Mexico, and in particular that portion of it included in the limits of the proposed La Mesilla land-district. It so happens that I have been, during my long residence in New Mexico, a careful personal observer and

gatherer up of mineral statistics and specimens of the ores of silver, gold, copper, iron, and coal; and most of the specimens of gold, silver, copper, and coal in the Land-Office formerly, and now in the Smithsonian, were contributed by me at my own private expense. In ———, I engaged Professor Owens and ——— Cox, now the able and distinguished geologists of the State of Indiana, were engaged by me, and at my expense, to go with me from Indiana at my expense and make a thorough and reliable geological survey of the principal mining sections of the Territory of New Mexico. This duty was performed by Professors Owens and Cox, and with signal ability; and such has been the demand upon me in London, England, for copies of the report of Professors Owens and Cox that I have not a single copy to give you, but will loan you my copy, now in the possession of the Hon. S. B. Elkins, our able, active, and useful Delegate from New Mexico in the present 43d Congress.

Now, you will see from this report, twenty-seven miles south of Santa Fé, N. Mex., at the foot of the Sandia range of mountains, the Ortis Mine was visited, and large bodies of anthracite coal were examined, and, on assay by Professor Cox, was found equal in its quality to the best anthracite coal of Pennsylvania; and many tons of iron-ore, magnetic, visible on the surface at mine, and sufficiently pure to put in the furnace of the blacksmith and make a pick-ax for the miner.

Professor Owens and Cox and myself made the journey to New Mexico, and thence south down the Rio Grande Valley to the town of San Mesilla, 300 miles distant from Santa Fé, N. Mex., and from the La Mesilla west we traveled to the celebrated copper-mines of Santa Reta and Hanover, 130 miles west of La Mesilla, and in the vicinity of Fort Bayard and the enterprising town of Silver City, where now are in operation several good steam stamp-mills crushing the silver ore profitably, and successfully working; and the extension of the mining business is expected to increase rapidly in the future, if the hope in the future of a railway in the thirty-second parallel of latitude to San Diego does not "fade away like the snow-flake on the river." For a description of the "situs" of the Santa Reta copper-mines, worked profitably since 1804, when not interrupted by the hostile raids of the great quasi-Indian nationalities, known as Navajoes and Apaches tribes of Indians, see report of Owens and Cox. Since the visit to the Santa Reta and Hanover copper-mines, the county of Grant has been organized with American settlers, the county-seat being called and inscribed on the land-office map of 1873 as Silver City, Grant County, N. Mex. On our journey to Santa Reta and Hanover and San José, and on the return, we stopped several hours at the celebrated Hot Springs of the Mimbres River, and I will leave the report alluded to of Professor Owens and Cox to describe them, only remarking that the Hot Spring has built itself a tufaceous stone cone on the open plain one hundred yards in diameter at its base and about forty feet high, with an opening in the center about ten feet in diameter and about eight feet deep, of bright, clear, more than boiling-hot water; when reaching some two feet of the top of the rim, shoots off gayly down to the extensive plain through these several channels, which seemed to have been left designedly for that particular purpose; and I have spent several hours reposing on the brim admiring the contest of several bubbles every second struggling from the bottom to the top of the spring to see which could gain the exploding surface the soonest. The high repute of these Hot Springs of the Mimbres for medicinal purposes for a half century has been well known and highly spoken of by many invalids who have been restored by them to health and vigor much more certainly than by Dr. Sangrado's universal prescription for all internal and external ailments, of hot water. On the return to the Mesilla and Las Cruces towns, less than a league distant from each other, in the wide and rich valley of the Mesilla a few days were spent, in which Professor Owens and Cox visited the Stephenson and St. Adelia silver-mines at the foot of the Organ Mountains, about a dozen miles east of the town of Las Cruces Doña Aña, N. Mex., and I will omit the description of these mines of Stephenson and St. Adelia, and I will leave it to the interesting report of Professors Owens and Cox above alluded to. You will also notice in said report of Professors Owens and Cox you will find a notice of a vein of rich iron-ore visible and clearly defined on the surface for a distance of fifteen miles, and existing in quantities to keep in operation many iron establishments for the next half century. This vein of iron-ore is about one thousand yards from Hanover copper-mine. For the description of this county, ninety miles from the little village of Paroje, to Roblere and Doña Aña, where the Rio Grande strikes the base of the little mountain of Fra Cristoval, and then deflects a little west of south; it then hugs the western base of Fra Cristoval Mountain for ninety miles, with here and there a small fertile river-bottom covered with a beautiful forest of cotton-wood trees until it strikes the Roblero, and enters the wide and fertile valley of the Mesilla, Dona Ana, and Las Cruces, extending fifty miles, to a distance of nine miles this side of El Paso, Tex., and El Paso Chihuahua, N. Mex., where the Organ Mountains cross the Rio Grande and go southwest through the State of Chihuahua, celebrated justly from my personal knowledge for its delightful climate and rich and permanent pasturage, and extensive mines of silver worked to the extent of millions annually prior to 1680, opened and worked by the Spaniards. Now, when you come to examine the public surveys in the new county of Lincoln on the east of the moun-

tains bordering the Rio Grande Valley, and in the county of Grant on the west, and the surveyed portions of the public lands down the valley of the Rio Grande to the eastern boundary of New Mexico and the western boundary of the extensive State of Texas, owning and controlling under her State sovereignty two hundred millions of acres of fertile and productive lands, much of it justly and generously devoted to the listening of the steam-whistle of the railroad-engine heavily freighted with cattle and cotton for the northern cities, for sale and consumption. Now, when the honorable Committee on Public Lands of the honorable United States Senate see the distance to Santa Fé, and the expense of more than the value of the land to be entered absorbed in the journey to Santa Fé and return, it will satisfy the honorable committee of the Senate on Public Lands to report favorably, and soon pass the bill H. R. 429.

Yours, respectfully,

JOHN S. WATTS.

Hon. DANIEL D. PRATT,
United States Senate.

S. Rep. 114—2

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1874.—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

REPORT:

[To accompany bill H. R. 517.]

The Committee on Post-Offices and Post-Roads, to whom was referred the bill H. R. 517, having had the same under consideration, report as follows:

It is shown by the affidavits of Sarah F. Lincoln, postmaster, H. G. Shuart, assistant postmaster, and Josiah Rich, and W. C. Slayton, citizens of Spencerport, Monroe County, N. Y., that the post-office at said Spencerport was broken open by burglars, on the night of January 3, 1873, and the door of the iron safe, belonging to the American Express Company, whose office is located in the same building, was blown off with powder. And it is also shown by the affidavits of the said Sarah F. Lincoln and H. G. Shuart that, on the night of January 3, 1873, postage-stamps belonging to said post-office, and amounting to the sum of \$516.20, had been locked up in said safe, and stolen therefrom on the night aforesaid.

And it is also shown by the affidavit of Sarah F. Lincoln, that she immediately notified the chief of police at Rochester, N. Y., Buffalo, N. Y., and Lockport, N. Y., and also telegraphed to the Second Assistant Postmaster-General, in Washington, D. C., and wrote to J. McDonald, Elmira, N. Y., special agent of the Post-Office Department, and B. K. Sharretts, another special agent at New York.

N. S. P. Crocker makes affidavit that he is deputy postmaster at Spencerport aforesaid, and is well acquainted with the disposition made of the stamps, &c., belonging to said office, and, although he did not have charge of the office on the night aforesaid, he believes the statements made by the said S. F. Lincoln and H. G. Shuart to be a true and full statement of the facts. Josiah Rich and W. C. Slayton also testify that they are well acquainted with said S. F. Lincoln, N. S. P. Crocker, and H. G. Shuart, and believe their statements entitled to the fullest credit.

A petition signed by sixty-five citizens of Spencerport recommends that relief be granted in accordance with the facts above set forth.

A letter from the Third Assistant Postmaster-General, dated January 12, 1874, shows that the amount claimed (\$516.20) is not in excess of the probable amount of stamps in said office on the night of January 3, 1874.

Believing the case entitled to relief, the committee recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1874.—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

REPORT:

[To accompany bill H. R. 1222.]

The Committee on Post-Offices and Post-Roads, to whom was referred House bill No. 1222, having had the same under consideration, report as follows:

It is shown by the affidavits of George W. Keyes, postmaster of Olivet, Mich., and his sister, Sophia A. Keyes, who was the duly-qualified clerk of said post-office, that, on the 5th of May, 1869, the said George W. Keyes deposited in the safe of Green & Ely, merchants of that place, a tin box, containing private papers and funds, and also postage-stamps, belonging to the said office, to the amount of \$106.50; and that the said George W. Keyes and Sophia A. Keyes were the only persons who had access to said box.

It is also shown that, on the night of May 5th, 1869, the store of Green & Ely was entered by burglars, and the iron safe containing said tin box was broken open, and the said box robbed of its contents. The box was afterward found in a lake ten miles distant from Olivet, but no stamps or money was found therein.

Messrs. A. L. Green, Edwin N. Ely, and Hiram C. Barnes, residents of Olivet, Mich., testify under oath as to the robbery of the said safe and of its supposed security as a place of deposit for valuables, and to the fact of its containing, on the night of the robbery, the cash-box of the said George W. Keyes, which they believe contained his postage-stamps and funds. They also state that they have been acquainted with the claimant, George W. Keyes and his sister, Sophia A. Keyes, for fifteen years, and believe that the affidavits made by them in relation to this matter are true.

It is also shown, by a copy of a letter received from the Third Assistant Postmaster-General, that the said George W. Keyes promptly notified the Post-Office Department of the robbery and loss, and requested an investigation of the matter.

A statement of the Third Assistant Postmaster-General shows that the amount claimed (\$106.50) is not in excess of the probable amount of stamps on hand.

In view of the facts, the committee are of opinion that relief should be granted, and therefore recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred a petition, numerously signed, asking Congress to grant, by special act, a pension to William C. Parker, of Marshall County, West Virginia, submit the following report :

There is nothing before the committee except a petition and the form of a bill. The facts are not sworn to by any witness ; not even by the beneficiary. He does not claim to have been an enlisted soldier even. The facts as stated in the paper are as follows : Parker was a conductor in the employ of the Baltimore and Ohio Railroad Company on the 27th of May, 1861, and lost his leg, and was otherwise permanently injured, as follows :

While at Wheeling, Va., on the day above named, and in the employ of said railroad company, he was ordered by Gen. B. F. Kelley, commanding the post at that place, to get a train of cars in readiness to transfer troops from Wheeling to some point east on said road ; that in pursuance of said military order he proceeded, before daylight on the morning of the 27th of May, 1861, to get the train in readiness for the purposes aforesaid ; that while engaged in said duty a violent storm came up and blew some cars standing on a side track up to the main track, and in the darkness and storm they were unobserved until the backing train came in collision with the said cars ; that in the collision he was knocked off the car in front of the backing train, and the whole train passed over him, severing his right leg, breaking his left arm, and otherwise permanently disabling him ; that he was at the time, and is now, a loyal citizen of the United States.

He claims, or rather his friends claim for him, that on this state of facts he should be regarded as having been in the military service of the United States at the time he suffered his injuries, and in the line of his duty, and that by reason of the premises he is equitably entitled to be placed on the roll of the invalid pensioners, in the same manner as if he had been regularly enlisted and mustered into the service of the United States.

There would be, apparently, a strong warrant for this claim in case the injury had occurred after the passage of the act of 21st July, 1862. That act authorized the President of the United States to take possession of any railroad line in the United States, its rolling-stock, offices, shops, buildings, and all their appendages and appurtenances ; to prescribe rules and regulations for holding, using, and maintaining it, and to extend, repair, and complete the same, and to place under military control all the officers, agents, and employés belonging to the line taken possession of, and to make them a part of the military establishment, subject to all the restrictions imposed by the rules and articles of war. The law provided the mode by which the damages sustained by the railroad in consequence of this seizure and use should be ascertained,

and the award of the commissioners was to be submitted to Congress for its action.

The statement of the law sufficiently demonstrates that all the men engaged in the operation of the road seized were compulsorily made part of the military establishment, and compelled to do service for the United States. The road and its rolling-stock would be required for one or both of two purposes—to transport the supplies of the Army and the men of the Army. It might also be used to transport captured enemies. A more useful instrumentality in carrying on the operations of the war cannot well be conceived. The act amounted to a conscription of the men and an appropriation of the property of the company. The employes were required to transfer to the United States the services they engaged to render to the company. The hazard of this service would be greater than in the ordinary transactions of the business of the road. The compensation provided would extend to payment of the employes. In that respect they would stand on a footing with soldiers regularly enlisted. Granting that the danger of the service was less than that of soldiers, still it was greater than it was before the seizure of the road for war purposes. It was a compulsory service, as strict as if the men had been drafted as soldiers.

Looking at the matter in this light, we should feel disposed to allow Mr. Parker a pension had the facts stated been sustained by proof, and provided it appeared that the road was seized and used by the military authorities after the passage of the act in question. As it is, we can only recommend that the petitioners be allowed to withdraw their petition, to enable them to present the case in proper form.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Barnet Simonson, for a special act to correct the muster-roll of his company in the war of 1812 by removing the charge against him of desertion, for a bounty land-warrant and for pension, have had the same under consideration, and report:

That the petition contains a statement under oath before a notary public, of New York, of the enlistment of petitioner for three months; shows one month's service and explains his absence for the remainder of his service by stating that he had by authority of his officers permission to visit his father on Staten Island for "one day," and that while so absent for one day he was stricken down with typhoid fever, and remained insensible and delirious for over three months and was an invalid for a whole year.

That he applied for a land-warrant, which was refused him because of said charge of desertion upon his muster-roll; that he made application to have the charge of desertion removed, which was denied for want of proper authority, and he now comes to Congress for relief. He refers to proofs on file in the office of the Third Auditor of the Treasury, but does not show what they will establish. No proofs or papers accompany the petition.

The committee feel that in a case of this importance, where we are asked to correct a military record that has stood for sixty years in order to grant to one the full bounty of the Government for meritorious services as a soldier, the petitioner should at least accompany his application with the best attainable evidence and a full statement of the names and residence of witnesses; show in detail the grounds and proofs upon which he relies, with the further explanation of the reason why he made no effort up to 1855 to correct the muster-roll, and of his silence almost continuously since to correct this grave charge against him, and not leave these proofs to be hunted up by this committee to make out a case for him.

The committee ask to be discharged from the further consideration of the case.

THE HISTORY OF THE

REPUBLIC

The history of the Republic is a story of the struggle for freedom and justice. It is a story of the people who have fought for the right to live in peace and harmony. It is a story of the people who have fought for the right to be free from oppression and tyranny. It is a story of the people who have fought for the right to be equal before the law. It is a story of the people who have fought for the right to be heard. It is a story of the people who have fought for the right to be free. It is a story of the people who have fought for the right to be just. It is a story of the people who have fought for the right to be free from fear. It is a story of the people who have fought for the right to be free from want. It is a story of the people who have fought for the right to be free from pain. It is a story of the people who have fought for the right to be free from sorrow. It is a story of the people who have fought for the right to be free from all that is bad and evil. It is a story of the people who have fought for the right to be free from all that is dark and gloomy. It is a story of the people who have fought for the right to be free from all that is ugly and repulsive. It is a story of the people who have fought for the right to be free from all that is hateful and cruel. It is a story of the people who have fought for the right to be free from all that is wicked and sinful. It is a story of the people who have fought for the right to be free from all that is evil and evil-doing. It is a story of the people who have fought for the right to be free from all that is bad and evil. It is a story of the people who have fought for the right to be free from all that is dark and gloomy. It is a story of the people who have fought for the right to be free from all that is ugly and repulsive. It is a story of the people who have fought for the right to be free from all that is hateful and cruel. It is a story of the people who have fought for the right to be free from all that is wicked and sinful. It is a story of the people who have fought for the right to be free from all that is evil and evil-doing.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1874.—Ordered to be printed.

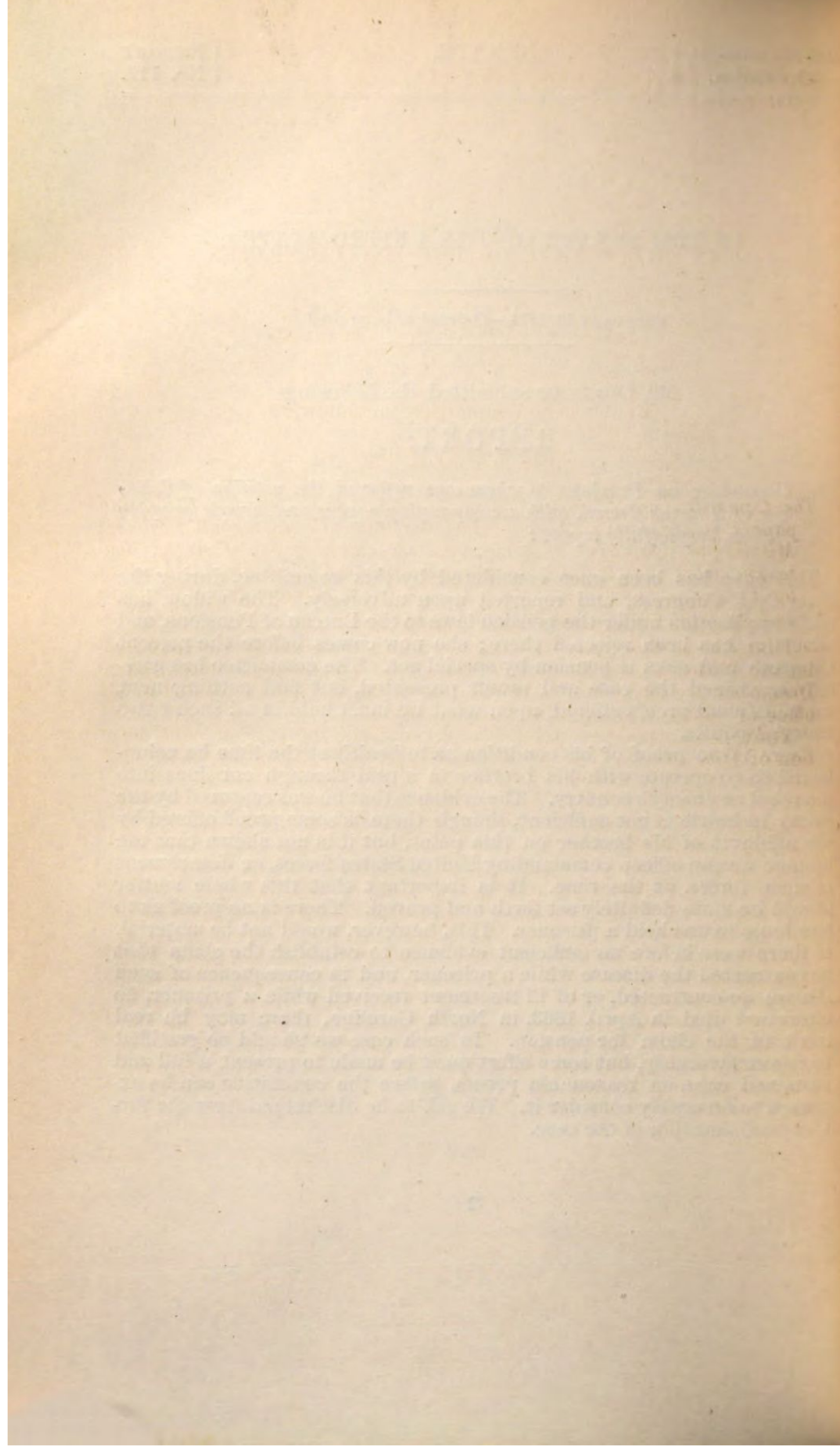
Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Celic, widow of Thomas Tweed, with accompanying papers and proofs, praying a pension, respectfully report :

This case has been once considered by this committee, during the Forty-first Congress, and reported upon adversely. The widow has made application under the pension laws to the Bureau of Pensions, and her claim has been rejected there; she now comes before the present Congress and asks a pension by special act. The committee has carefully examined the case and proofs presented, but find nothing new, nor additional proofs offered, upon what we must hold in all such cases material points.

There is no proof of his condition as to health at the time he volunteered to co-operate with his brother in a raid through our lines into the rebel or enemy's country. The evidence that he was captured by the enemy in battle is not sufficient, though there is some proof offered by the affidavit of his brother on this point, but it is not shown that the brother was an officer commanding United States forces, or detachment of such forces, at the time. It is important that this whole matter should be more definitely set forth and proved. There is no proof as to how long he was held a prisoner. This, however, would not be material. If there were before us sufficient evidence to establish the claim that he contracted the disease while a prisoner, and in consequence of such disease so contracted, or of ill-treatment received while a prisoner, he afterward died in April, 1863, in North Carolina, there may be real merit in the claim for pension. In such case we should be gratified to report favorably, but some effort must be made to present a full and sustained case, on reasonable proofs, before the committee can be expected to favorably consider it. We ask to be discharged from the further consideration of the case.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1874.—Ordered to be printed.

Mr. CLAYTON submitted the following

R E P O R T :

The Committee on Military Affairs, to whom were referred petition and papers in the case of Abram Hoevenor, late of the Second Regiment Mississippi Volunteers, of African descent, claiming pay of second lieutenant from May 9, 1863, to December 22, 1863, less amount received by him as pay of sergeant of 127th Regiment Illinois Volunteers, have had the same under consideration and report :

That Abram Hoevenor was mustered into the service as second lieutenant of the Second Regiment Mississippi Volunteers, (colored,) upon December 22, 1863, prior to which date no legal vacancy existed in the office of second lieutenant of his company.

Your committee ask to be discharged from the further consideration of this case.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of John P. McElroy, praying to be allowed a pension, submit the following report :

The certificate of the adjutant-general of the State of Missouri shows that McElroy was enrolled on the 11th day of August, 1862, at Bowling Green, in that State, in Company D, Forty-ninth Regiment of Missouri Enrolled Militia, to serve until further orders, or during the war, and that he was mustered into the State service as a private on that day at the place and in the regiment above given, to serve until further orders, or during the war, unless sooner discharged. On the muster-roll of the company, from August 11, 1862, to April 30, 1863, he was reported as a corporal, ordered into active service August 11, 1862, and discharged on account of wounds, but the date of discharge not given.

In November, 1871, when the claim of McElroy for a pension was pending in the Pension-Office, the Commissioner applied to the Adjutant-General, United States Army, for information whether the above organization, during the period of McElroy's service, was under the direction and control of a military officer of the United States. To this the Adjutant-General replied that there was no evidence of service rendered by McElroy on file in his Office, or that the Forty-ninth Missouri Enrolled Militia was under the control of a military officer of the United States during the period of his alleged service.

The petitioner avers that while actively engaged in co-operating with United States forces in Northeast Missouri he received a gun-shot wound, caused by the accidental discharge of his musket, by which a musket-ball struck the under part of his jaw-bone, severing it, and passing upward, tearing and breaking the bones of his side-face and head, severing and destroying the drum of the ear, and totally destroying its hearing. He alleges that he is frightfully disfigured and permanently disabled.

The lieutenant of the company testifies to the injuries substantially as stated by the claimant, and adds that he was never formally discharged from the service, the company being merely relieved from active duty till disbanded by operation of law. An examining-surgeon certified on the 12th of September, 1868, that McElroy was incapacitated to the extent of three-fourths, and that his disability was permanent. Another examining-surgeon at a later date states that McElroy is totally incapacitated for obtaining his subsistence by manual labor.

There seems no reason to doubt that the petitioner's injury occurred substantially as stated by him in his petition, and that his would be a

proper case for relief in case the organization with which he was connected had been co-operating at the time with the Army of the United States, or was under the control of one of its military officers, or had it appeared that he was temporarily serving with any regularly-organized military force of the United States. But there is nothing in the evidence which satisfies us that this was any other than a State organization. The general law does not allow pensions in such cases as this.

We must, therefore, concur in the decision made by the Pension-Office, and remit the soldier to the State of Missouri, in whose service he received his injuries.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 1402.]

The Committee on Pensions, to whom was referred the bill (H. R. 1402) granting a pension to John A. Fisher, submit the following report:

Fisher was a first lieutenant in Company B, Twenty-third Regiment Missouri Volunteers; was taken prisoner at the battle of Pittsburgh Landing, and was paroled at Libby on the 12th of October, 1862, and on being exchanged he rejoined his regiment in Missouri, and was discharged on the 1st of July, 1863, on account of disability incurred in the service. For this disability (hernia) he is now drawing a pension at the rate of \$8.50 per month, his disability being rated at one-half. He seeks, and the object of this bill is, to increase his pension to the rate of those who have lost their eyesight.

It appears that after Fisher's discharge he took an active part in putting down the rebellion, but not as an enlisted soldier of the United States. He claims to have rendered service in organizing troops and otherwise to have aided in defeating the Morgan raiders. He says he was appointed an inspector of arms *pro tem.*; that he went to Athens, Ohio, as lieutenant of an independent volunteer company; and that afterward he went to Maysville, Ky., where he assisted the provost-marshal in collecting Government property and in capturing deserters, in which service he was once taken prisoner and made his escape.

In the early part of 1865 he was appointed on the force of the United States special police, which, however, did not consist of enlisted men. Fisher's employment was to arrest deserters and spies and bring them to headquarters, and likewise to retake Government property.

On the 19th of May, 1865, while operating as a detective in Brown County, Ohio, and in possession of a horse captured by soldiers with a prisoner, he was set upon by two men who undertook to take the horse from him forcibly. One of these men discharged his revolver at Fisher. The shot took effect, destroying his right eye wholly, and injuring the sight of the other. The testimony shows that Fisher was performing an official duty in a proper manner at the time he was shot, and the witnesses impute no blame to him, except for not having shot Thomas Sullivan before he was shot by him.

Fisher was a sober, brave man, very loyal and enterprising, and with arms and equipments furnished at his own expense, at a compensation of \$1.50 per day, was serving the United States in a very useful capacity at the time of receiving the injury. As before said, he was not an en-

listed man at the time, else his case would be a clear one. He is described by all the witnesses as a courageous and discreet man, of good habits, upon whom reliance could be placed at all times.

His disability in the total loss of one eye, and the impairment of the eyesight of the other, is in excess of that for which he is now drawing a pension, and the House bill proposes that he shall receive such an increase of his present pension as the law allows to pensioners of like disability.

The committee, with some hesitation, have concluded to recommend the passage of the bill without amendment.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 518.]

The Committee on Pensions, to whom was referred the petition of Benjamin C. Skinner for a pension, have had the same under consideration, and beg leave to report :

That the petition of Benjamin C. Skinner, duly sworn to, shows that he enlisted as a soldier in August, 1862, in Company K, Fourteenth Regiment New Hampshire Volunteers, for three years; that he served faithfully until the 8th of July, 1865, when he was honorably mustered out of the service, with his regiment, at Savannah, Georgia; that he was a healthy man when he entered the service, but that, about the year 1863, he was attacked with yellow jaundice; that in 1864 he was violently attacked with chronic diarrhea, having for some time previous been suffering from a severe cough contracted in the service, and that about this time the cough was increased, accompanied with bloody expectorations; that in February, and again in May, 1865, he suffered from bleeding of the lungs, which continued in intensity until the fall of 1866, when, under advice, he changed his residence from New Hampshire to Wisconsin, in the hope of alleviation from his sufferings. About the year 1871, after having had several hemorrhages of the lungs, with occasional relief from what seemed to be a serious disease of the lungs, the coughing ceased for a time, but the disease soon manifested itself in another form; the kidneys and bladder became involved, and he has thus, continuously, since the close of the war, suffered from the disease contracted in the service.

The facts set out in the petition are abundantly proven by the captain of his company, the surgeon of his regiment, Dr. Charles Cowles, Dr. Moses M. David, John M. True, Samuel F. Beede, John C. Haines, and Dr. Samuel Ingall. These witnesses abundantly prove that Skinner enlisted as a soldier, at the time stated, in good health, perfectly sound and free from disease; that he contracted the disease or diseases in the service in the line of his duty; that he has continuously suffered from the one or the other up to the present time, seldom able to labor at all, and finally was compelled to abandon his trade as a tailor, and is now almost wholly unfit for manual labor of any kind. It is not deemed important to state in detail the testimony separately of each witness. The evidence was before us as we obtained it from papers in the claim of Skinner on file in the Pension Bureau, and from the affidavits in the

form of additional proofs, filed with the petition referred to the committee. We think there can be no reasonable doubt of the justness of his claim to a pension. In 1866 he made his application in due form for a pension. It was continued and suspended from time to time for additional testimony, until finally five years elapsed before favorable adjudication from the time of filing it. It was, thereupon, finally rejected because not supported by record-evidence in the War Department. But this is fully explained and accounted for by the proof in the case, that at the time of the muster-out of his regiment he was able to be with it for that purpose, and was not at the time in hospital, and did not, therefore, require a certificate of disability to enable him to leave the service.

The committee, therefore, recommend that said Benjamin C. Skinner be placed upon the pension-roll, and for that purpose herewith report and recommend the passage of the accompanying bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1874.—Ordered to be printed.

Mr. CRAGIN submitted the following

REPORT:

[To accompany bill S. 141.]

The Committee on Naval Affairs, to whom was referred the bill (S. 141) for the relief of certain contractors for the construction of vessels of war and steam-machinery, having had the same under consideration, submit the following report :

This bill proposes to allow certain contractors, who claim that they have sustained damage and suffered loss in the execution of their contracts in the building of vessels of war and the construction of steam-machinery, to prove their claims in the Court of Claims, giving said court the authority and jurisdiction to hear and determine the individual cases upon the principles and rules laid down in the act of March 2, 1867.

These contracts were made with the Government during the years 1861, 1862, 1863, and 1864, and many of them before the war had produced any great advance in the prices of labor and materials, and when it was impossible to foresee its long continuance, or its effect in the increasing of prices.

By the terms of the contracts the Government was required and bound to furnish plans and drawings as fast as required by the contractors during the progress of the work ; and in many cases the officers of the Government failed in this regard, and in consequence thereof the work was suspended for longer or shorter periods of time. The building of these vessels was in a degree experimental, and the Navy Department in many instances ordered material and important alterations in the plans and specifications during the course of construction, which also caused delays in the fulfillment of the contracts. By reason of the delays thus caused by the omissions and action of the Government the contractors were delayed in many cases ; and that they incurred great loss and hardship by reason of the *advance in prices* of labor and material, which was an incident to the delay directly occasioned by the action of the Government, your committee have no doubt.

The fact that these parties went on and fulfilled their contracts after it became apparent that to do so would involve them in loss, relying upon the justice and generosity of the Government to save them from financial ruin in completing vessels which were indispensable in prosecuting the war to a successful termination, is certainly laudable on

their part, and worthy of commendation and the careful consideration of Congress. Although the Navy Department undertook to pay for extra labor and materials which entered into these alterations, the amount allowed in many cases is alleged insufficient to make good the loss of claimants, as allowances were only made for specific changes; and the damage to the contractors by reason of the delays occasioned by the Government and the advance in prices of labor and material was not considered. And while your committee do not express any opinion as to the sufficiency of awards made by the Department, (for this could only be ascertained by a full investigation of each case,) they can see no good reason or valid objection why these questions, which are eminently judicial, involving disputed facts and controverted questions of law, should not be referred to that tribunal of the Government, created for the determination of cases of this very character; one that is familiar with all the laws and rules relating to Government transactions and contracts, possessing all the appliances for a full, complete, and just trial of all questions of law and fact, and its decision, whether for or against the Government, subject to revision by the Supreme Court. During the third session of the Forty-first Congress, the joint resolution, No. 92, "for the relief of constructors of vessels of war and steam-machinery," was passed, which gave the court the jurisdiction now contemplated by this bill; but the President vetoed it, upon the ground that there was no provision that the extraordinary advances could not have been avoided by the exercise of ordinary diligence and prudence on the part of the contractors; and that omission is now supplied, thus meeting the objection raised at that time and carefully guarding the Government against the payment a second time of any moneys already paid to the contractors by reason of these extraordinary outlays. In the act of March 2, 1867, Congress evidently intended that these contractors should be compensated—

First. For all the costs and expenses of the changes and alterations made during the progress of the work not required by the original contract.

Secondly. For the rise in material and labor used in and employed on said vessels, *occasioned by the delay* required to make such changes, *at the order and direction of the Government*, unless such increased costs could have been avoided by *ordinary prudence and diligence* on the part of the contractors.

Your committee think that these cases should all be investigated by the courts, and in this way justice will be done to both Government and claimants. The proposed relief is contingent upon the positive proof of claimants' allegations to the Court of Claims. Parties must show themselves within the law, and their evidence must be satisfactory on the questions at issue in order to entitle them to recover.

If they have been wronged, then will they have an ample remedy in the law which the bill proposes to enact; and if the Government by its action did not occasion them any hardship or loss, further than stipulated by the express terms of the contracts, it will be fully protected by the learned officers of a tribunal of its own creation. The investigation of these cases involves the examination of questions of law and fact which the Court of Claims can with most propriety hear and determine.

The right to relief by this class of claimants has several times been recognized by the Navy Department and by Congress; by the Department, in paying to most of the contractors sums of money over and above the contract-price for extra labor and materials, and by Congress

in the Senate resolution and the act of March 2, before cited; also in the passage of bill for the relief of heirs of George Bester, (vide Stats. at Large, vol. 17, p. 733,) and again in the act of March 3, 1873, granting the same relief to Miles Greenwood that is now proposed for those who assumed like responsibilities and sustained losses for like reasons.

The committee report the accompanying bill and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1874.—Ordered to be printed.

Mr. CLAYTON submitted the following

REPORT:

[To accompany bill S. 249.]

The Committee on Military Affairs, to whom was referred the bill (S. 249) authorizing and directing the Secretary of War to give to George A. Armes, late captain Tenth United States Cavalry, an honorable discharge, to date June 7th, 1870, having considered the same, beg leave to submit the following report:

It appears that the charges preferred against Captain Armes were four in number. Upon the first a *nolle prosequi* was entered; upon the third and fourth he was found not guilty, and upon the second charge, "conduct unbecoming an officer and gentleman," he was found guilty, and sentenced to be dismissed the service. These charges were preferred by Capt. George W. Graham, against whom Captain Armes had previously preferred charges, upon which Graham was afterward tried, found guilty, and sentenced to be dismissed the service, fined and imprisoned in a penitentiary, and he is now in the penitentiary for highway robbery. It also appears that a considerable portion of the important testimony which was relied on was given by Capt. Charles G. Cox, against whom Captain Armes had previously preferred charges, upon which, within two months thereafter, he (Cox) was dismissed the service, cashiered, and sentenced to be fined, and imprisoned in a penitentiary. His evidence was contradicted point blank by another witness, and a portion of his testimony is conclusively shown to have been false.

There is nothing in the record, so far as can be judged from a careful examination thereof, that, according to military usage, justifies the sentence that was imposed by the court-martial.

Your committee are well satisfied that the charges were preferred through motives of jealousy and revenge, and the proceedings show that there was a determination on the part of those officers who instigated the prosecution to have Armes dismissed at any cost.

It has been shown beyond a doubt that Captain Armes was a brave and gallant officer. He was mentioned in General Orders by Gen. Philip St. George Cooke, United States Army, and congratulated by letter by Maj. Gen. Winfield S. Hancock, and recommended for promotion for energy and gallant and meritorious conduct on several occasions, both during the rebellion and in campaigns against the Indians, and was promoted captain from a second lieutenant, and made a major by brevet.

General C. C. Augur, General Nelson A. Miles, General N. B. Buford, General B. H. Grierson, and a number of other Army officers, bear testimony to the high character and efficiency of Captain Armes.

Numerous statements from responsible and well known citizens also show that Captain Armes was considered an upright and honorable man by those who have known him longest and best.

Your committee report back the bill without amendment, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1874.—Ordered to be printed.

Mr. MITCHELL submitted the following

R E P O R T :

[To accompany bill S. 519.]

The Committee on Claims, to whom was referred the petition of Doctor J. Milton Best, having considered the same, beg leave to submit the following report :

The claimant, Dr. J. Milton Best, was at the commencement of the war a resident of Paducah, State of Kentucky, at the confluence of the Ohio and Tennessee Rivers ; and was then, according to the evidence, in possession of a brick house, large, substantial, and of elegant finish, and of which he was the owner. It was 52 feet in length by 40 feet in width, and three stories high, besides an attic. The first story was 8 feet high, the second, 15 feet, and the third, 13 feet. It was built on stone foundations 4 feet deep and 2 feet thick ; was a new house, and, as clearly shown by the testimony, was worth, at the time of its destruction, with its contents, \$27,000.

In the fall of 1861 a fort, afterward known as Fort Anderson, was located and built about one hundred and fifty yards from claimant's house, by General C. F. Smith, then commanding the Union forces at that point. When this fort was built General Smith, (as it appears from the evidence,) after consultation with his officers, decided to have claimant's house condemned and removed, for the reason that it was in the way of the effective use of the guns of the fort, constituted a shelter to the enemy, and served as a protection to their forces from the fire of its guns ; and in order that compensation for its value might be estimated, a board of officers was ordered to assess its value ; but it never reported, as the officers composing it were suddenly ordered to other parts of the country. This fact appears from the testimony of General E. A. Paine, our brigade commander.

On the 25th of March, 1864, General Forrest, of the confederate army, attacked Paducah in force, which, it must be remembered, was the first assault of the enemy on that place. Col. S. G. Hicks, of the Fortieth Illinois Volunteers, then commanding the Union forces in defense of that city, with a command of about seven hundred men, retired to and occupied Fort Anderson. The enemy took possession of claimant's house in large numbers, and a fight ensued. Our gunners in Fort Anderson suffered terribly from the bullets of the enemy's sharp-shooters, who availed themselves of the protection of claimant's house, where, from the windows in the third story, which were over twelve feet higher than the parapet of the fort, the enemy were enabled to get from that point a full view of our gunners, while the building obstructed the fire

of our guns. The enemy, however, were finally driven from the house by shells from the fort and the Union gun-boats, and they retired from the assault at 11 o'clock that night. Colonel Hicks, anticipating a renewal of the attack next morning, and believing it to be imminent, and his ammunition being nearly exhausted, gave orders for the immediate destruction of all houses within musket-range of Fort Anderson. The order was promptly executed, and claimant's house, with all its contents, was destroyed by fire. The enemy, seeing this, at once withdrew. During the engagement of the previous day, some damage was done to the house and its contents, the extent of which does not fully appear. After the engagement, seventeen of the confederate dead were found in the house. The claimant was in the house during the battle, and from the top of it he signaled to our forces the movements of the enemy.

All the proofs in the case, and they are abundant, show the claimant to have been all through the war thoroughly and enthusiastically loyal to the Government of the United States. In fact, his fidelity to it is not questioned. The proofs abundantly show that he rendered valuable service to the cause of the Union at the outbreak of the rebellion, and during its continuance. He was an open advocate continually of Union sentiments, and his earnest, effective labors in opposition to the rebellion caused him to be socially ostracised by the people of Paducah, whose sympathies and sentiments, as a rule, were with the confederates.

The question presented, then, is simply this: Do the facts stated impose upon the General Government the duty of rendering compensation to the claimant for the value of his property thus appropriated and destroyed? In other words, is the Government bound to make good to a loyal citizen the value of his property destroyed in a non-seceding State, by order of a commanding officer, in order to give effectiveness and strength to a fort deliberately erected by our own Army months prior to any actual hostilities in that locality, and in such close proximity to his property as to render its destruction a necessity, and for the purpose of saving an imperiled army from an anticipated and threatened attack?

Your committee find that this is *not* a case of the destruction of property by what is termed by law-writers "the ravages of war." This property was actually *appropriated* by the Government to public use two and a half years before it was really destroyed. All the necessary steps required by the laws of war for the appropriation of private property to public use were taken long prior to the destruction of the property. It was therefore a taking of private property for public use by the commanding officer of an army in the field—a *deliberate taking, and not the result of a conflict of armies*. This property was never inside the confederate lines, and Kentucky never was in insurrection against the Government.

But the history of this claim before Congress would seem to preclude the necessity of any elaborate report from your committee at this time. The case was first considered by the Senate Committee on Claims in March, 1870, who in that month reported it to the Senate with a recommendation favorable to the prayer of the petitioner. It was discussed in the Senate at some length in the month of April, and again in December of that year, and again in January, 1871. On the 5th day of that month and year the bill passed the Senate by a vote of 28 to 15. It failed, however, to pass the House of Representatives at that session of Congress for want of time. It was again reported to the Senate favorably by this committee December 14th, 1871, through its then

chairman, Mr. Howe, of Wisconsin; and on the 8th of April, 1872, after a brief debate, it was passed by 27 yeas to 12 nays. On the 8th of May, 1872, the House of Representatives, after a brief debate, passed it without a division. On being presented to the Executive it was, June 18th, 1872, returned to the Senate without his approval, accompanied by a message containing his reasons for withholding his assent to the bill. The message is brief and in the following words:

To the Senate of the United States:

I have examined the bill entitled "An act for the relief of J. Milton Best," and, being unable to give it my approval, return the same to the Senate, the house in which it originated, without my signature.

The bill appropriates the sum of \$25,000 to compensate Dr. J. Milton Best for the destruction of his dwelling-house and its contents by order of the commanding officer of the United States military forces at Paducah, Kentucky, on the 26th day of March, 1864. It appears that this house was one of a considerable number destroyed for the purpose of giving open range to the guns of a United States fort. On the day preceding the destruction the houses had been used as a cover for rebel troops attacking the fort, and, apprehending a renewal of the attack, the commanding officer caused the destruction of the houses. This, then, is a claim for compensation on account of the ravages of war. It cannot be denied that the payment of this claim would invite the presentation of demands for very large sums of money, and such is the supposed magnitude of the claims that may be made against the Government for necessary and unavoidable destruction of property by the Army that I deem it proper to return this bill for reconsideration.

It is a general principle of both international and municipal law that all property is held subject not only to be taken by the Government for public uses, in which case, under the Constitution of the United States, the owner is entitled to just compensation, but also subject to be temporarily occupied, or even actually destroyed, in times of great public danger and when the public safety demands it, and in this latter case governments do not admit a legal obligation on their part to compensate the owner. The temporary occupation of, injuries to, and destruction of property caused by actual and necessary military operations are generally considered to fall within the last-mentioned principle. If a government makes compensation under such circumstances, it is a matter of bounty rather than of strict legal right.

If it be deemed proper to make compensation for such losses, I suggest, for the consideration of Congress, whether it would not be better, by general legislation, to provide some means for the ascertainment of the damage in all similar cases, and thus save to claimants the expense, inconvenience, and delay of attendance upon Congress, and, at the same time, save the Government from the danger of having imposed upon it fictitious or exaggerated claims, supported wholly by *ex-parte* proof. If the claimant in this case ought to be paid, so ought all others similarly situated; and that there are many such cannot be doubted. Besides, there are strong reasons for believing that the amount of damage in this case has been greatly overestimated. If this be true, it furnishes an illustration of the danger of trusting entirely to *ex-parte* testimony in such matters.

U. S. GRANT.

WASHINGTON, June 1, 1872.

The message, together with the bill, was referred to this committee on the 7th day of February, 1873, and its chairman, Mr. Howe, submitted to the Senate an elaborate report, in which the merits, both of the claimant's petition and of the veto message, were fully and at great length discussed; and the report concluded with the recommendation that the bill be passed, notwithstanding the objections of the President.

[S. Report No. 412, 42d Congress, 3d Session.]

FEBRUARY 7, 1873.—Ordered to be printed.

Mr. HOWE, from the Committee on Claims, submitted the following report:

The Committee on Claims, to whom was referred the message of the President of the United States of June 1, 1872, returning to the Senate, without his approval, "An act for the relief of J. Milton Best," having considered the same, ask leave to submit the following report:

The objections of the President are not based upon the ground that the act is unconstitutional, or that it was inconsiderately passed. Neither of those objections could be well urged against it. The constitutional authority of Congress to provide for the

payment of a private claim cannot well be denied by any one. That the act in question was passed upon due and upon careful deliberation will not be denied by any one familiar with its history.

The bill was first reported to the Senate, from the Committee on Claims, on the 15th of March, 1870. It was debated on the 26th of April, the 12th and 14th days of December, 1870, and on the 4th and 5th days of January, 1871. On the last-mentioned day it passed the Senate, upon a call of the yeas and nays, by a vote of 28 to 15. It failed to pass the House of Representatives during that Congress. It was again reported to the Senate during the present Congress, and on the 8th of April, 1872, it was again briefly debated, and passed by a vote of 27 to 12. In the House of Representatives it was considered on the 8th of May following, when, after a brief debate, it passed the House without a division.

Some statesmen and some jurists have maintained that the proper use of the veto power was limited to the cases of unconstitutional and rash legislation. But the text of the Constitution as well as the usage of the Government sanctions a broader use of the power.

There can be no doubt that the President may interpose his veto to the passage of any bill, however constitutional it may be, and however maturely it may have been considered by the legislature; and there can be no doubt that when he does interpose his veto it can only be overcome by the concurrence of two-thirds of each House of Congress. Thus, in our governmental system, the negative of the President counter-weighs the vote of one-sixth of each House of Congress. With the assent of the President a majority of each House may enact a law. Against his dissent two-thirds are required to enact a law.

Since, therefore, the Executive veto paralyzes so large a portion of the legislature, it would seem that it ought not to be interposed but upon substantial and well-considered grounds. And it would seem quite evident that if the Executive assumes the task, with the help of seven Secretaries, of reconsidering the expediency of all the laws which Congress matures, with the aid of all of its committees and all its members, while he may sometimes correct mistakes, he may also sometimes make mistakes.

The principal objection urged against the act is, that it provides for a claim arising on account of the ravages of war. The message states the circumstances under which the claim arose, as follows:

"The bill appropriates the sum of \$25,000 to compensate Dr. J. Milton Best for the destruction of his dwelling-house and its contents, by order of the commanding officer of the United States military forces at Paducah, Ky., on the 26th day of March, 1864.

"It appears that this house was one of a considerable number destroyed for the purpose of giving open range to the guns of a United States fort. On the day preceding the destruction, the houses had been used as a cover for rebel troops attacking the fort; and apprehending a renewal of the attack, the commanding officer caused the destruction of the houses."

This destruction the President calls the "ravages of war." That in some sense it was the ravages of war cannot well be denied. That, in the same sense, the forage and subsistence consumed, the powder burned, the balls fired, the shells exploded, the guns burst, were the ravages of war, cannot be denied. But the Government has never yet denied its obligation to make compensation for all such ravages.

In the opinion of the committee, the house taken from the claimant was taken for the use of the Government. It was torn down and not occupied, because the destruction of the house was deemed more advantageous to the Government than the occupation of it would be. At the same time, its destruction was more injurious to the claimant than its occupation could have been. And, since the Government made that disposition of the house which was most beneficial to the Government, and most detrimental to the owner, it is difficult to see why the claimant should not be compensated for its destruction as much as for its occupation. The message asserts, as "a general principle of both international and municipal law, that all property is held subject not only to be taken by the Government for public uses, in which case, under the Constitution of the United States, the owner is entitled to just compensation, but also subject to be temporarily occupied, or even actually destroyed, in times of great personal danger, and when the public safety demands it; and, in this latter case, governments do not admit a legal obligation on their part to compensate the owner."

The committee has not found any such general principle affirmed either in international or municipal law, but has found the very reverse of that to be affirmed by all law, international and municipal.

Among the text-writers, Vattel discusses the very question, "Is the state bound to indemnify individuals for the damage they have sustained in war?" "Such damages," he says, "are of two kinds: those done by the state itself, or the sovereign, and those done by the enemy. Of the first kind some are done deliberately and by way of precaution, as when a field, a house, a garden, belonging to a private person, is taken for the purpose of erecting on the spot a town rampart, or any other piece of fortification, or when his standing corn or his store-houses are destroyed to prevent their being of

use to the enemy. *Such damages are to be made good to the individual, who should bear only his quota of the loss.*"

The same author speaks of damages caused by inevitable necessity, and he instances "the destruction caused by the artillery in re-taking a town from an enemy. These are merely accidents. They are misfortunes which chance deals out to the proprietors on whom they happen to fall."

The distinction between the two kinds of damages is clear: one is the result of accident, the other is the result of design. The sovereign, clothed with the right to make war, has the right to march troops and to fire guns. Damages which are the accidental result of such lawful acts do not constitute a ground of claim. But whatever property the Government takes from its own obedient subjects, for the more efficient prosecution of the war, should be compensated for, no matter whether it be forage fed to the cavalry horses, powder burned, timber used on fortifications, houses removed to make way for such fortifications, or houses destroyed to make them more secure.

Grotius asserts the same doctrine. He says:

"The king may in two ways deprive his subjects of their right, either by way of punishment or by virtue of his eminent power. But if he do so in the last way, it must be for some public advantage, and then the subject ought to receive, if possible, a just satisfaction for the loss he suffers out of the common stock."

Again he says:

"The state has an eminent right of property over the goods of the subjects, so that the state or those that represent it may make use of them, and even destroy and alienate them, not only in extreme necessity, but for the public benefit; to which we must add that the state is obliged to repair the damages suffered by any subject on that account out of the public stock."

Mr. William Whiting has discussed the subject of war-claims with direct reference to the liabilities of the United States growing out of the late war. He writes with extreme caution, but even he asserts that—

"If the private property of loyal citizens, inhabitants of loyal States, is appropriated by our military forces for the purpose of supplying our armies and to aid in prosecuting hostilities against a public enemy, the Government is bound to give a reasonable compensation therefor to the owner."

Again he says:

"When individuals are called upon to give up what is their own for the advantage of the community, justice requires that they should be fairly compensated for it. Otherwise public burdens would be shared unequally."

Again he says:

"Public use does not require that the property taken shall be actually *used*. It may be *disused*, *removed*, or *destroyed*, and destruction of private property may be the best public use it can be put to. Suppose a bridge owned by a private corporation to be so located as to endanger our forts upon the banks of a river. To demolish that bridge for military purposes would be to appropriate it to public use."

Dr. Best's house was so located as to endanger Fort Anderson. For that reason it was demolished by military authority. That demolition Mr. Whiting declares to have been a public use. If so, the Constitution imperatively requires that the public shall make compensation for it. Judicial authority is not less explicit than that of the text-writers.

In *Grant vs. The United States*, 1st N. & H. Reports, the court says:

"It may safely be assumed as the settled and fundamental law of Christian and civilized states that governments are bound to make just indemnity to the citizen or subject whenever private property is taken for the public *good, convenience, or safety*."

In that case the United States was held to pay for the property destroyed in Arizona, merely to prevent it from falling into the hands of the enemy.

In the case of *Mitchell vs. Harmony*, reported in 13th Howard, p. 115, Chief Justice Taney, delivering the opinion of the court, says:

"There are, without doubt, occasions in which private property may occasionally be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also where a military officer charged with a particular duty may impress private property into the public service or take it for public use. Unquestionably, in such cases, the Government is bound to make full compensation to the owner."

If, as the above authorities declare, the state must pay for the property of a citizen destroyed to prevent it from falling into the hands of an enemy, *a fortiori* should the state pay for property destroyed to prevent a *garrison* from falling into the hands of an enemy.

Justice Randolph, in the case of *The American Print Works vs. Lawrence*, 1 Zabris-
kie, 248, says that in—

"Cases where the state, by virtue of its right of eminent domain, reserves the property of a citizen and appropriates it to the use of the public; or in prosecuting some great public work, such as a canal or railroad, even in its sovereign capacity, or through

the power delegated to an incorporated company, finds it necessary not merely to take the soil and property of the citizen, but to destroy his mill-seat, divert his water-course, or commit other irreparable damage to private rights in order to effect the great object in view, in such case not only must private rights yield to the interest and wishes of the state, but it is a positive evil suffered by an individual for the supposed gain of the whole community, at the will of that community, and upon every principle of justice the public should make compensation."

The uniform action of Congress has been in strict accord with the principles adjudicated by the courts and declared by the commentators. Congress has recognized the principle in a great variety of cases, and so far as can be discovered has never denied it. The war of the Revolution was fought before we had any constitutional prohibition against taking private property for public use without compensation. The troops for that war were furnished by the several States. Congress did not assume the obligation of making compensation for property taken by the military authority. But it clearly recognized the principle that compensation should be made. Accordingly, in 1784 a resolution was adopted from which the following is an extract:

"That it be referred to the several States, at their own expense, to grant such relief to their citizens, who may have been injured as aforesaid, as they may think requisite, and if it shall hereafter appear reasonable that the United States should make any allowance to any particular State, which may be burdened much beyond others, that the allowance ought to be determined by Congress."

In accordance with that resolution, when, in 1818, Mary Brower and others petitioned for compensation to be made to them for property burned and destroyed on Long Island by the American army on the advance of the British forces in August, 1776, the Committee on Revolutionary Claims of the House denied the prayer, not upon the ground that compensation should not be made, but upon the express ground that the sufferers ought to have appealed to the State of New York for such compensation. And notwithstanding the resolution of 1784, Congress did pass an act for the relief of an academy in Wilmington, of which the following is a copy:

"That, as an indemnification to the corporation of trustees of the public grammar-school and academy of Wilmington, in the State of Delaware, for the use and occupation of the said school, and the damages done to the same by the troops of the United States, during the late war, there be granted to the said corporation of trustees a reasonable compensation, payable out of any unappropriated money in the Treasury of the United States, which compensation shall be ascertained by the accounting officers of the Treasury."

The relief granted by that resolution was recommended by Alexander Hamilton, then Secretary of the Treasury.

Subsequent to the war with Great Britain of 1812, a large number of claims for similar injuries were compensated by Congress. Reference is made to a few.

An appropriation was made to William H. Washington, to compensate him for a house situate near the west end of the Potomac bridge, and which was "destroyed by order of an officer of the United States." The facts of the case, briefly stated, were that a corporal was placed in charge of the house, containing a quantity of public stores, with directions from his superior officer to blow up the house in case of an attack by the enemy. Hearing guns fired on the opposite side of the river, he apprehended an attack, and accordingly blew up the stores. The committee reported that, being of opinion "the officer to whose care the public stores were committed thought it prudent and proper to destroy the house and stores, to prevent the latter from coming into the possession of the enemy, the petitioner should be paid the value of his house." He was paid accordingly.

Jacob Shinnick was the owner of a rope-walk in Baltimore. It was destroyed by General Smith, commanding at that post. He states the circumstances attending its destruction, as follows:

"That rope-walk and two others were so close to the works that, had they remained, and an attack been made by the enemy, they would have afforded such a cover as would have enabled him to have approached close to the works undiscovered. It became necessary to destroy them. Nor did I give the discretionary power to General Forman until the attack of the enemy appeared certain. Their destruction was postponed as long as prudence permitted, nor were they destroyed until it became absolutely and indispensably necessary."

The committee reported "that the destruction of the rope-walks was deemed by the commanding officer prudent and necessary in the defense of the city of Baltimore, then threatened to be invaded by a merciless and vindictive enemy. They are therefore of opinion that the public good, in his opinion, requiring their destruction, the owners of the property should be compensated to the amount of its value."

The principle applied in the case of Mr. Shinnick is precisely the principle employed in the case of Mr. Best. An attack was believed to be imminent in Baltimore, as an attack was believed to be imminent in Paducah. If an attack had been made in Baltimore, the rope-walk would have supplied a cover to the enemy. If an attack had

been made in Paducah, Best's house would have furnished a cover to the enemy. In order to deprive the enemy of that shelter, both the rope-walk and the house were destroyed. It is impossible to say that a house is not as much within the protection of the Constitution as a rope-walk. It is impossible to say that Paducah is not as much within the protection of the Constitution as Baltimore. It is impossible to say that Dr. Best is not as much within the protection of the Constitution as Mr. Schinnick. Congress has repeatedly recognized the same principle in acting upon claims growing out of the late war.

In 1867, an act was passed to pay J. O. Arms for a house destroyed in Fairfax County, Virginia. That house was destroyed, as the committee reported, by military orders, and to prevent its being used by the enemy as a cover for attack and also as a point for observation. That act was approved by President Johnson.

In 1871, Congress passed an act making compensation to the Kentucky University for buildings destroyed. The buildings were taken by military authority. They were destroyed by accident. But if the Government is required to make compensation for buildings taken and then destroyed by *accident*, it is difficult to see why it should not pay for buildings taken and then destroyed by *design*. That act was approved by President Grant.

In 1870 Congress passed an act to pay Otis N. Cutler \$50,000 for cotton taken by military authority to pack the machinery of the steamer Tigress, to enable her the more securely to run the rebel batteries at Vicksburgh. The boat and the cotton were sunk on the trip. That cotton was taken by military authority. It was destroyed by the rebels. But if the Government must pay for property taken by its Army and then destroyed by the *enemy*, it would seem it ought to pay for property taken by its Army and then destroyed by *itself*. That act was approved by President Grant. The papers in the case show that he examined its merits while acting as Secretary of War, and that although he refused to pay the claim for want of authority, he pronounced it "meritorious," and referred the claim to Congress.

One other legislative precedent is worthy of notice. The case of *Mitchell vs. Harmony* has already been referred to. In that case the property of the plaintiff was taken by military authority. As a consequence of the taking, the goods fell into the hands of the enemy. The courts held that the taking was unnecessary, and therefore required the officer in command to make compensation for the loss of the goods. But Congress held that inasmuch as the officer acted in good faith, and for what he believed to be the interests of the Government, the Government ought to protect him against the consequences of his mistake. Congress, therefore, assumed the defense of the officer before the Supreme Court, and when judgment was finally rendered against him assumed the payment of it.

To the foregoing precedents a great many might be added. Not a single case has been found in which Congress has denied the liability assumed in the precedents cited. Not a single authority has been found controverting the principle asserted by Grotius, by Vattel, by Whiting, by the Court of Claims, and by the Supreme Court of the United States.

If the doctrine of the message be examined in the light of examples drawn from other countries, the contrast is still more violent. During the war of the Revolution, most of the colonists who adhered to the Crown, and were therefore known as loyalists, were made to suffer heavily because of their loyalty. The insurgent authorities drove them from their homes and confiscated their estates. The war terminated in the triumph of the insurgents. At once the despoiled loyalists appealed to Parliament for indemnification for their losses. A commission was appointed to inquire into the extent of such losses. The "claimants were required to state in proper form every species of loss which they had suffered, and for which *they* thought they had a right to receive compensation." None of the injuries complained of were inflicted by the government of Great Britain. They were inflicted by the action of its enemies. In principle, their claims were precisely the same as the claims of our loyal citizens would be if they were to demand compensation of this Government for injuries sustained, not through its action, but through the action of its late enemies. Nevertheless, for such claims Parliament undertook to make compensation, and after a long and careful examination of the claims, appropriated a sum for their settlement amounting, in the aggregate, to more than \$16,000,000.

In September, 1871, immediately upon the close of the Franco-German war, France, although defeated and subjected to the payment of a fine of 3,000,000,000 of francs to her conquerors, did not ask to avoid the obligation of making compensation to her despoiled subjects. Accordingly the national assembly provided not only for the payment of all private damages inflicted by the French authorities, but also provided for the repayment of all exactions made upon French subjects in the name of taxes by the German authorities. The same decree appropriated 100,000,000 of francs, to be placed at once in the hands of the ministers of the interior and of finance, to be apportioned between the most necessitous victims of the war, and appropriated a further sum of 6,000,000 of francs to be distributed by the same ministers "among those who

suffered the most in the operations attending the attack made by the French army to gain entrance into Paris." A translation of the whole decree is appended to this report.

The President urges, in support of extreme caution, "that the payment of this claim would invite the presentation of demands for very large sums of money, and such is the supposed magnitude of the claims that may be made against the Government for necessary and unavoidable destruction of property by the Army, that I deem it proper to return this bill for reconsideration."

To this it may be replied that the act passed for the relief of Dr. Best does not provide for the payment of property unavoidably destroyed. On the contrary, it clearly discriminates against and disclaims liability for such payment. The injury done to Best's house by firing upon it while in possession of the enemy was deemed to be unavoidable. For such injury the Committee on Claims held the Government was not obliged to make compensation. What the committee deemed to be the amount of such damages it deducted from the claim, and only reported for payment that which was supposed to be equal to the value of the property which was deliberately destroyed by the military authorities to promote the security of the garrison.

It may be replied, secondly, that if the principle involved in the bill be just, and be, as has been seen, in accordance with the commands of all law and of all precedent, the Government cannot be excused from making payment to Dr. Best because of the weight of the burdens such payments would impose upon the Treasury. If it took the last dollar of the Republic to pay such claims, not one of her citizens would be reduced thereby to more abject want than Dr. Best was by the destruction of his house and its contents. The testimony in the case shows that when his house was destroyed he was stripped of everything in the shape of property except the site on which it stood.

Hugo Grotius wrote his treatise upon the "Rights of War" amidst the unparalleled barbarities which attended the thirty-years' war. It is doubtful if war between civilized nations ever before or ever since has been so cruel as that. In the single "duchy of Wurtemberg, history asserts that eight towns, forty-five villages, and thirty-six thousand houses have been laid in ashes, and seventy thousand hearth-fires completely extinguished; seven churches and four hundred and forty-four houses had been burned at Eichsted. Many towns that had escaped destruction were almost depopulated; three hundred houses stood empty at Nordheim. More than two hundred had been pulled down at Gottingen, merely to serve as fuel. The wealthy city of Augsburg, which contained eighty thousand inhabitants before the war, had only eighteen thousand left when it closed. * * * In 1635 there were not hands enough left at Schweidnitz to bury the dead, and the town of Ohlau had lost its last citizen. * * * Forests sprang up during the contest and covered entire districts which had been in full cultivation before the war, and wolves and other beasts of prey took possession of the deserted haunts of men."

Yet standing in the midst of such wide-spread, unsparing devastation, Grotius did not hesitate to affirm, in the language already quoted, the obligation of the state to repair all damages suffered by any subject by the destruction of his property for its use, and he added this most significant injunction: "Neither shall the state be absolved from this obligation though for the present not able to satisfy it. But whenever the state is in a capacity, this suspended obligation shall resume its force."

In the light of such stern teachings, he who regards law or loves justice will be reluctant to see a loyal citizen reduced by the deliberate act of his Government to absolute destitution, and then turned away from the full tills of the Treasury, which carry from year to year unused millions, a single year's interest on which would compensate for every injury coming within the principle of Dr. Best's claim. There is no warrant for believing that the principle recognized by the returned bill would involve the Treasury in large disbursements. It has already been seen that the bill establishes no new precedent. Congress has already paid several claims resting upon precisely the same principle. It has voted to pay every such claim which has been presented. From the foundation of the Government it cannot be discovered that Congress has ever refused to pay a similar claim. If, as some profess to apprehend, similar claims for millions await payment, the question arises, Where are they? During the eleven years which have transpired since the late war commenced, the whole amount of claims of every kind, recommended for payment by the Senate Committee on Claims, excluding those reported from the claims commission, will fall considerably below a million. An examination made upon this point in January, 1871, disclosed the fact that but \$555,651.55 had at that date been paid since the close of the war. That sum included \$109,000 paid to one firm for property sold, the proceeds of which had been placed in the Treasury, and it included \$60,000 appropriated to another individual for legal-tender notes which had been destroyed. So at that date it appeared, and was stated on the floor of the Senate, that the Treasury had not been made poorer by the action of the Committee on Claims to an amount exceeding \$400,000. When we consider the magnitude and the duration of the war through which we have passed; when we consider the munificent appropriations made by France to her subjects, no

one of whom could have suffered more from deprivation of property than Dr. Best has suffered; when we consider that Great Britain appropriated to the few loyalists who adhered to her cause during the Revolution more than \$16,000,000, the meager appropriations hitherto made by Congress seem quite inconsiderable, and suggest an apprehension to the candid mind that the Government may have done less than justice, instead of more than justice.

In conclusion, upon this point, the committee respectfully submit that no claim ever was or ever can be preferred against the Government resting upon more impregnable grounds. All just claims against the Government must be urged upon one or more of three grounds—either that the claimant has benefited the Government, or that he has been damaged by the Government, or that he has been promised money by the Government. But a promise is of slight validity if it be unsupported by a consideration either of benefit to the promisor or of loss to the promisee. Where such consideration does exist, a promise adds nothing to the obligation to pay. In the case of Dr. Best, his claim is supported both by the consideration of loss to him and of benefit to the Government. He was injured by being deprived of all he possessed. The Government was benefited by the additional security afforded to a weak and imperiled garrison. No promise could add validity to such a claim.

The message suggests a doubt as to the reasonableness of the appropriation made to Dr. Best. It furnishes no evidence upon that point. In estimating the value of the house destroyed, the committee were guided originally by the testimony of those who built the house. Since the reference of the veto message, the claimant has submitted to the committee plans of the building, verified by the affidavit of John V. Gould, city engineer of the city of Paducah. The plans disclose a building fifty-two feet in width by forty feet in depth and three stories in height, besides the attic; that the first story was eight feet high, the second story fifteen feet, and the third thirteen feet; that it was built upon stone foundations laid in hydraulic cement, four feet deep and two feet thick; that it had twenty-six paneled doors, six of which were of large size; that it had twenty-six windows of the largest size, besides side-lights to the doorways; that it had twenty-six pairs of window-shutters, twelve fire-places with mantels and grates, eight hearths which were formed and laid of iron slabs, each slab being four feet wide by seven feet long; that it had four flights of stairs; that its roof was covered with copper and sheet-iron. It seems to have been a large and substantial brick house, elegantly finished. Six witnesses testify that the house, with its contents, was worth over \$27,000. The character of the witnesses is attested by the collector of the port. Yet, if the building was worth but half the sum at which the witnesses estimate its value, the appropriation of \$25,000 now will scarcely make the claimant whole.

The committee, therefore, report back the bill, and recommend its passage, the objections of the President to the contrary notwithstanding.

[Official journal of the French Republic, Versailles, September 11, 1871.]

The national assembly has adopted, the President of the French Republic promulgates, the law, the tenor of which is as follows:

Considering that, during the late war, the portion of the territory invaded by the enemy bore exactions and suffered devastations without number; that the sense of patriotism which animates the heart of the French people enjoins upon the government the duty of indemnifying those who have, in the common conflict, undergone these exceptional privations, the national assembly, without intending to depart from the principles laid down in the law of July 10, 1791, and the decree of August 10, 1853, decree:

ARTICLE 1. An indemnification will be allowed to all those who have borne, during the invasion, the contributions of war, requisitions either in money or in kind, fines, and material damages.

ART. 2. These contributions, requisitions, fines, and damages will be verified and estimated by the cantonal commissions who act for the time being under the direction of the minister of the interior. A departmental commission will revise the labor of the cantonal commissions and fix the definite sum total of the losses proven. This commission will be composed of the *préfet*, president, four counselors-general designated by the council-general, and of four representatives of the ministers of the interior and finances.

ART. 3. When the extent of the losses shall have been thus verified, a law will fix the sum the state of the public treasury will permit to be appropriated for their indemnification, and determine the distribution of the same.

A sum of one hundred millions will be immediately placed at the disposition of the minister of the interior and of the minister of finances, and apportioned between the departments *pro rata*, according to the losses respectively proven, to be distributed by the *préfet*, assisted by a commission appointed by the council-general and taken from its number, between the most necessitous victims of the war and the *communes*, the most involved in debt. This first allowance will be part of the sum total assigned to each department to be distributed among all the claimants.

ART. 4. A sum of six million francs is placed equally at the disposition of the ministers of the finances and of the interior, to be, without further legislative enactment, distributed among those who suffered the most in the operations attending the attack made by the French army to gain re-entrance into Paris.

ART. 5. Independently of the preceding provisions, the contributions in money, collected under the title of taxes by the German authorities, will be settled as follows:

SEC. 1. The *communes* that have paid any sums under the title of taxes will be reimbursed their advances by the treasury.

SEC. 2. The tax-payers who will prove payment of any sum under the same title, either into the hands of the Germans, or to the French municipal authorities, will be permitted to apply the whole sum on account of their contributions for 1870 and 1871. They will be required to produce their vouchers within the period of a month.

SEC. 3. The settlement specified above will comprise:

1. The whole sum of the French direct tax.

2. The double of that tax, as showing the indirect taxes levied by the Prussians. All that, which in the payments will exceed the direct tax doubled will be considered as simple contribution of war, and governed by the principles laid down in the preceding articles.

Deliberated in public sessions at Versailles, July 3, August 8, and September 6, 1872.

President,

JULES GRÉVY.

Secretaries:

PAUL BETHMONT.

VISCOMTE DE MEAUX.

PAUL DE RÉMUSAT.

BARON DE BARANTE.

MARQUIS DE CASTELLANA.

N. JOHNSTON.

President of the Republic,

A. THIERS.

Minister of the Interior, F. LAMBRECHT.

In the general statement of facts and conclusions of law contained in the report of this committee, of February 7, 1873, and which has been incorporated into and made a part of this report, your committee concur; and without attempting any further elaboration of either statement of facts or principles of law, would respectfully report the accompanying bill and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT:

[To accompany bill H. R. 154.]

The Committee on Military Affairs, to whom the bill H. R. 154 was referred, having had the same under consideration, beg leave to submit the following report :

That the said William Stoddard in 1863 was acting as quartermaster of the United States Volunteers at Alexandria, Va. That on the 4th of December of that year his books, papers, and money in his possession as such quartermaster was seized by order of the Secretary of War; that among these things so taken was a package of money amounting to \$360, inclosed in an envelope and marked "William Stoddard, private." Said sum of money was removed to the office of the Secretary of War, where it remained until December 11, 1868, when it was turned over to the Secretary of the Treasury with other moneys by miscellaneous covering warrant No. 962, 1868.

The evidence, which is official, further shows that Stoddard in 1869 made full settlement of his accounts as quartermaster, and received certificates of non-indebtedness; also that this sum of \$360 was not considered in that settlement. Application having been made by Stoddard to have this money returned to him, it was decided by the War Department that this could not be done except by a special act of Congress.

In view of these facts the committee recommend the passage of the bill.

REPORT

The first part of the report is devoted to a general survey of the situation of the country at the beginning of the year. It is then followed by a detailed account of the various departments of the government, and a summary of the results of their operations. The report concludes with a statement of the resources of the country, and a forecast of the prospects for the future.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

R E P O R T:

[To accompany bill H. R. 1585.]

The Committee on Military Affairs, to whom was referred the bill H. R. 1585, having had the same under consideration, would report as follows :

That Seth Lamb, the father of the claimants, at the commencement of the late war was proprietor of Saint Charles Hotel, Washington City ; that he boarded and quartered Captain Mott's howitzer corps, Second Regiment New York State Militia, from May 21 to June 1, 1861, for which he charged the sum of \$490, the sum now claimed.

The evidence in this case consists, in addition to that of the claimants, of the affidavit of Judge Underwood, which is positive and specific, covering the whole case ; also, the account of Seth Lamb, with the indorsement of the proper officers ; proof that said company was then in the employ of the United States, defending the city ; also evidence from the War and Treasury Departments, showing that said claim has not been paid.

The evidence being conclusive as to the liability of the Government, we therefore recommend the passage of the bill.

REPORT

The following is a report of the results of the investigation conducted by the committee on the subject of the alleged fraud in the sale of the land in the State of New York. The committee was organized by the Legislature in the year 1864, and has since that time been engaged in a careful and thorough examination of the subject. The results of the investigation are here presented in a report to the Legislature, which is divided into two parts. The first part contains a statement of the facts of the case, and the second part contains the conclusions of the committee. The committee has found that the alleged fraud was committed by the late Governor, and that the land was sold at a price far below its value. The committee has also found that the sale was made in violation of the laws of the State, and that the Governor was guilty of a breach of the public trust. The committee has recommended that the land be sold again, and that the proceeds be used for the benefit of the State. The committee has also recommended that the Governor be impeached for his conduct in the sale of the land.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 415.]

The Committee on Pensions, to whom was referred the bill (S. 415) granting a pension to Bartholomew Diggins, late ordinary seaman United States Navy, have had the same under consideration, and submit the following report:

It appears from the letter of the Surgeon-General of the Navy to the Commissioner of Pensions, dated March 4, 1872, that the applicant received a gunshot wound in the left arm and right breast May 28, 1862, in the line of duty, on the United States ship Hartford.

The Commissioner of Pensions, on sending the papers in the case on file in his office, February 9, 1874, makes the following observations relative to the claim:

Pensioner applied February 27, 1872, on account of gunshot wound of left arm and right breast, received May 28, 1862. He was discharged the service December 25, 1864, and his disability being shown by the report of the examining surgeon to be five-eighths of total, he was pensioned at \$5 per month from the date of filing of his application. Having failed to apply within five years from the date of his discharge, his pension could only commence from the date of filing of the last presented evidence in the case. No application for increase has been filed since the original adjudication of the claim.

The statement of the honorable Commissioner is fully sustained by the papers on file. Your committee therefore consider that the applicant should seek relief in the Pension-Office under the general law, provided his condition entitles him to further relief, and ask to be discharged from the further consideration of the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill S. 527.]

The Committee on Finance, to whom was referred the petition of Hanson Harmon, asking an allowance for office rent, have had the same under consideration and submit the following report:

Petitioner is clerk of the United States circuit and district courts in Delaware, and has his office at Wilmington. The Government owns a building there in which the Federal courts are held, furnishing rooms, also, for the clerk, marshal, post-office, &c. It was erected prior to the institution of the excise or internal-revenue system, and there have been no accommodations therein for assessors or collectors. An arrangement was made with Mr. Harmon's predecessor prior to 1864, under which the assessor of internal revenue occupied the clerk's office in this building, the clerk taking rooms outside. In 1864, Mr. Harmon, coming into the clerk's office by appointment, required his room in the building, and thereupon an arrangement was made by which the assessor was to retain the same, if the Government would allow the clerk \$150 per year as rent, being the amount he would have to pay for another office. It appears that this room in the Government building was more convenient than any that could be obtained for the Bureau; accommodates the people better; and one suitable for the business could not have been obtained elsewhere for less than from \$300 to \$400 per annum.

This arrangement was accepted as satisfactory by the Internal-Revenue Department; Mr. Harmon's bills for each quarter's rent were approved by the Commissioner, and allowed by the accounting officers of the Treasury in the quarterly accounts of the Bureau, at the rate of \$150 per annum from September 13, 1864, to December 31, 1867, inclusive.

Upon the coming in of the account for the quarter ending March 31, 1868, the voucher was suspended by the accounting officers "to await the result of an inquiry into the matter," such inquiry being suggested by the supervising architect. Thus the matter rested until in September last, when the petitioner, referring to his letter of March 15, 1873, asked to be paid this rent from January 1, 1868, to March 25, 1870. This claim was referred to the law-officer of the Department, and afterward to the Department of Justice. The Attorney-General replied that it was doubtful if the clerk would have any legal claim upon the

Government for the rent of his office, but he thought there would be equity in his claim. The Commissioner of Internal Revenue communicated the result to the petitioner, adding: "This would perhaps entitle you to relief from Congress by special legislation."

The claim now before us is for rent at the rate of \$150 per annum, from January 1, 1868, to March 25, 1870, \$334.37½.

It appears that this was a very reasonable rent, and there is no pretense that it was ever paid. During all this time the assessor occupied the clerk's office. The Government, as we understand it, will not allow or pay for rent of clerk's office, and especially where a room is furnished for that purpose in the proper building. It does, however, allow a reasonable rent for assessor's rooms. In this case it appears the arrangement was well understood; was acquiesced in by the Department; rent paid thereunder for several years; the Government derived an advantage thereunder by reason of the low rent for the clerk's office, as compared with what would have been necessary for the assessor, and it seems to us but just and equitable that it should be paid, and we report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 510.]

The Committee on Pensions, to whom was referred the bill (H. R. 510) granting a pension to Thomas R. Hardwick, late a sergeant in Company E, Eighth Regiment Heavy Artillery, New York Volunteers, have had the same under consideration, and submit the following report:

The testimony in the case is meager and evasive. Captain Parker, late of the Eighth Regiment, Heavy Artillery, the regiment in which claimant last served, and about forty other persons of Genesee County, New York, petition Congress to grant a pension to the said Hardwick, but they do not allege disease or disability contracted in the service or otherwise, but only upward of three years' faithful service. And W. L. Cowan, his captain in the Fourteenth Regiment Volunteers, certifies that the said Hardwick was a good and faithful soldier, but says nothing about disease or disability. Claimant was discharged on the 30th May, 1865, not on account of disability but on the disbandment of the Army.

J. A. Barringer, M. D., of Genesee County, New York, testifies that he knows claimant, having treated him during the six months preceding the time of making the affidavit (which is not dated) for chronic inflammation of the urinary passages, and chronic enlargement of the prostate glands; that he is permanently disabled, and entirely unfitted thereby for the performance of his usual business.

Dr. Alanson Owen, of the same place, testifies, under date of 16th January, 1872, that he has known claimant for the last sixteen years, who was "a sound, healthy man before he went into the United States service, and that, during said service, he became an invalid, and since the close of the war he has been afflicted with disease to such an extent as to render him unable to labor, and that said disease, as deponent verily believes, was contracted in the service of the United States."

These affidavits constitute the whole of the testimony in the case touching the disability of claimant, and Dr. Barringer gives no opinion as to the probable origin of the disease, while Dr. Owen does not venture to name the disease with which claimant is suffering. He only believes that claimant in some way became an invalid while in the service, which is probable, but the testimony is not sufficient to warrant the relief asked.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 1401.]

The Committee on Pensions, to whom was referred the bill (H. R. 1401) granting a pension to Penelope T. Heald, have had the same under consideration, and submit the following report:

It appears from the petition accompanying the bill that the claimant is the widow of Henry H. Heald, late of Fall River, Mass., who, in 1863, was in command of the schooner Norman, which was in the employment of the United States Government as a transport; that she sailed from New York with a cargo of horses for New Orleans in October of that year, and, after discharging, was ordered to proceed to Pensacola for a cargo of coal, and while on the passage was fired upon and captured by the crew of a barge which came from the shore. The schooner was burned and her officers and crew carried to Cahawba, Ala.; thence to Richmond, Va.; and thence to Andersonville, Ga.; where they were held as prisoners of war, and where Captain Heald and all the other officers and crew, excepting only John Borden, second mate, died from starvation and disease contracted while in prison. Petitioner represents that she has no property, except a small house and lot of ground in Fall River, where she resides, and \$500 in money. And she prays for pension from the date of her husband's death, at the rate his rank would have entitled him to if he had been mustered into the service of the United States as a "master" in the Navy.

David Brown, Philip D. Borden, D. F. Brown, and R. C. Brown, citizens of Fall River, Mass., and part owners of the schooner Norman, corroborate so much of the statements of claimant as relates to the employment of the vessel as transport, her capture, and commander, and say that the statements in the petition relating to the imprisonment and death of Captain Heald, and the amount of property owned by the petitioner are true, "according to their knowledge and belief." They further state that the vessel has been paid for by the Government.

This is all the information which is to be gleaned from the papers before the committee, and neither the petition nor the statement of the owners of the schooner are sworn to; while it is shown by the petition that John Borden, the second mate of the schooner, who alone of all the officers and crew survived the imprisonment at Andersonville, is still alive and residing in Fall River, or was at the date of the petition, and no reason is given why his testimony has not been procured. True, it could have but little influence in determining the result of claimant's application in the form in which relief is asked, because neither the ves-

sel nor her officers and crew were in the service of the United States, though doubtless chartered by the Quartermaster's Department for general transport-service, with guarantee against capture or loss by the enemy. The officers and crew of the vessel were, in that case, in the service of her owners, and it is fair to presume at wages commensurate with the risk from rebel cruisers and other casualties. They were no more in the service of the Government than any other contractors for supplies for the Army or Navy, or for transportation by land or sea.

There is no evidence which would justify the passage of the bill, even if applicant's husband had been an officer of the Navy, because the imprisonment and death of Captain Heald is not proven, but if the facts, as alleged, were duly established, they do not bring the applicant within the scope of the pension-laws, which were intended to provide only for those in the military and naval service of the Government. To extend their provisions to persons, however meritorious or unfortunate, who may have suffered while fulfilling engagements with the Government, whether lucrative or otherwise, would open the door to a large class, who were in one way or another engaged, during the rebellion, in supplying the wants of the Army and Navy, and who were, for the most part, working for themselves and not for the Government.

Your committee, therefore, recommend that the bill do not pass.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Adrian S. Lee, late of the United States Marine Corps, praying to be placed on the Navy pension-roll, have considered the same, and make the following report :

The discharge shows that the applicant was enlisted at Boston, Mass., on the 27th of May, 1861, and honorably discharged on the 12th June, 1865, at marine barracks, Philadelphia.

Petitioner alleges that he was seized with pain and lameness in the left thigh while in service and in the line of duty, on board the frigate Potomac, about the 31st August, 1864; that the part commenced swelling, which he believes was caused by scurvy which he had contracted; that he did not apprehend anything very serious from it, and hoped to recover from the attack when he should be relieved from duty, and therefore said nothing about it to the officers of the vessel; but that since about December, 1865, the part affected has been a running sore, from the effects of which he is wholly disabled.

This statement was made in 1866, when his claim was filed in the Pension Office. There are two affidavits; that of James E. Caswell, a corporal of marines, made in June, 1866, and that of Peter Knoles, a private of marines on board the ship Potomac, dated August, 1866. The latter testifies that he was on duty with claimant about August, 1864, when he complained of lameness in his left thigh, which continued to grow worse during the remainder of his term of service on board the Potomac, and at times was unable to do duty; that swelling afterward became a running sore, but that claimant believed it would cease to trouble him as soon as he should get clear of the service, and therefore never complained of it to the surgeon. Witness further states that he was present when claimant was discharged, and that he was then so lame that he was wholly unable to labor.

Corporal Caswell testifies to substantially the same facts. He served about three years with claimant, and was also present when he was discharged.

No other evidence is found among the papers of the case. There is no certificate of any surgeon whatever, nor does it appear that any examination of the physical condition of claimant has been made at any time, and his own statement, and those of the witnesses as well, date back nearly seven years.

The late Commissioner of Pensions addressed a note to Commander

Gibson, of the United States Navy, in September, 1866, who, it seems, was understood to have been in command or on duty on board the Potomac at the date referred to by claimant, inquiring whether he had any knowledge of the disability complained of by claimant, or whether he knew the whereabouts of any officer who was on the Potomac at that time who would be likely to know anything about it. The commander answered in the negative.

The committee, therefore, recommend the indefinite postponement of the petition.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1874.—Ordered to be printed.

Mr. SPRAGUE submitted the following

REPORT:

[To accompany bill S. 512.]

The Committee on Public Lands, having had under consideration the bill (S. 512) to extend the time for constructing the Wisconsin Central Railroad, in Wisconsin, beg leave to make the following report:

In 1864 Congress granted lands to aid in building certain railroads in Wisconsin, by act approved May 5, 1864; said grant was ten sections on each side of said railroads, and to expire in ten years on May 5, 1874. (Statutes at Large No. 13, pages 66, 67, 68.)

By a joint resolution approved June 21, 1866, Congress amended the original act respecting the route over which the roads were to be constructed, and recognized the action of the legislature of the State of Wisconsin in conferring a portion of said grant on the Portage and Superior Railroad Company. (Statutes at Large No. 14, pages 360, 361.)

Wisconsin, in 1866, chartered the Winnebago and Superior Railroad Company and the Portage and Superior Railroad Company, and conferred on said roads the benefit of said grants.

These roads were consolidated by said State of Wisconsin June 14, 1869, as the Wisconsin Central Railroad Company.

The lands granted were not withdrawn from settlement or sale until November, 1869, by reason of inability of the original companies to benefit thereby, and settlements and sales were made of a large portion of the lands, and those also the most valuable.

There will be but about 700,000 acres, all told, which the present company can acquire after building its 330 miles of road, while the grant contemplates upward of 1,400,000 acres.

The Wisconsin Central Railroad entered on their enterprise early in the year 1869. It has constructed and equipped 200 miles of road. It has been completed in a superior manner, expended \$1,800,000 of subscribed funds, and upward of \$4,000,000 derived from the sale of or pledge of bonds.

The stockholders, whose petition is herewith attached and made a part of this report, marked A, contemplate furnishing 50 miles of road, which will close up a gap and give them a continuous line to the lake, thence 80 miles to Superior City, a total of about 130 miles in about two and one-half years, the time petitioned for and provided for by the bill under consideration.

The stockholders, during a period of very great difficulties, have furnished, equipped, and are now operating 200 miles of railroad from November, 1869, and it is reasonable to think they will complete the 130 miles within the time asked for. The stockholders are gentlemen of known character for wealth and enterprise.

The committee annex as a part of their report the memorial of the legislature of the State of Wisconsin, marked B.

The committee report the bill to the Senate and recommend its passage, with an amendment to strike out all after the word seventy-six in line eleven.

A.

To the Senate and House of Representatives of the United States in Congress assembled :

The undersigned are stockholders in the Wisconsin Central Railroad Company, which is the successor of the corporations empowered to build a railroad about three hundred and thirty miles long through the center of the State of Wisconsin to Ashland and Superior City, on Lake Superior, and to take lands in aid of that railroad, under the third section of the act of Congress entitled "An act granting lands to aid in the construction of certain railroads in the State of Wisconsin," and approved May 5, 1864. The right to take lands under that act expires in ten years from its date. This company has finished, equipped, and is now operating two hundred miles of its road, and has entered and worked upon the entire route to Ashland, and laid track from both ends. It now asks for more time to complete the construction under that act. Extraordinary obstacles, not to be foreseen, and great national calamities beyond its control, have alone prevented the work from being now finished, and forced the company to ask this extension of time.

The natural obstructions to be overcome are great. The road lies for more than two hundred and fifty miles through dense forests. The roadway is to-day an avenue of heavy clearing, bordered by an almost unbroken line of trees. The labor of clearing and grubbing is enormous, and heavy cuts have to be made. Large streams and deep ravines have to be crossed, and many bridges, some of wood and some of iron, have already been built. One of these bridges, made of wrought iron, by this company, in the heart of the woods, is sixteen hundred feet long and ninety feet high. The company has done all its work in the most thorough manner. Its ties are nine feet long, and twenty-eight hundred and twelve to the mile. Its road-bed is already ballasted for nearly the whole distance built. Its iron rails are of American make, weighing fifty-seven pounds to the yard. Its stations, water-tanks, motive-power, and rolling-stock are all of the best style and quality. The road and equipments are in all particulars first-class.

The first cost has been great. The character of the ground has rendered construction unusually expensive. An army of laborers had to be worked, fed, and housed in a wilderness covered with trees, destitute of roads, and remote from habitation. The company has already spent more than six millions of dollars in money in this construction.

The financial difficulties which the enterprise has encountered have been still harder to overcome. When the work was begun the stockholders paid in \$1,800,000 in cash, and expended it in constructing the road before issuing any bonds or borrowing any money. The progress of the road afterward depended on the ability of the company to convert its first-mortgage land-grant bonds into cash, which in ordinary times could have been readily accomplished. Negotiations have been several times almost consummated for all the money needed, when they have been suddenly terminated by some remarkable public calamity. An arrangement had been effected in London for over \$8,000,000, when it was upset by the excitement in England over the Alabama claims. The papers were to have been signed in London on the very day the London Times called public attention to the matter. The same trouble also interfered with another negotiation in Germany for the sale of over \$6,000,000 of bonds; \$1,000,000 of them were taken and paid for, but the balance of the sale, being in options, was lost, because the market for American securities abroad was ruined by the controversy arising under the Treaty of Washington.

The great fire in Chicago destroyed the company's office in that city. The great fire in Boston, in 1872, crippled very seriously many of the stockholders, and terminated an arrangement which had been made in Germany to lend the company \$1,000,000 in gold. Subsequently a contract was made with a wealthy firm in London for \$2,000,000 in gold, but the panic in Vienna last summer embarrassed the London house and put an end to that contract also. Notwithstanding all these drawbacks, the stockholders were not disheartened, but undertook among themselves to raise sufficient money to finish the line through to Ashland within the time limited in the grant.

The subscription to accomplish this was nearly filled, and the construction was more vigorously pushed than ever before, when the recent panic, which has embarrassed every enterprise in the country, defeated the company's plans. From the time when ac-

tive operations were begun on this railroad, there has been a succession of disasters which would have utterly broken down a corporation of less energy and resources. The Franco-German war, the Alabama claims excitement, the panics abroad and at home, and the terrible fires in Chicago and Boston have followed in close succession, and made it impossible to accomplish the work in the time fixed in the grant.

The stockholders now pray that they may be allowed more time on this land grant, in order to save their property. They have struggled hard to complete the undertaking within the period limited in the act of May 5, 1864. They have encountered natural obstacles far worse than was anticipated. They are building through a wilderness a road which never can be completed without such aid. They have been baffled and forced to ask more time, not through any fault or neglect of their own, but by great public misfortunes, which could not have been anticipated.

They have proved their good faith and energy. They have continued their work, after its completion before May 5, 1874, became manifestly impossible, relying upon the justice of their claim to additional time. They urge, in their own behalf, their constant good faith, their persistent labor, their extraordinary efforts, and the difficulty of the undertaking; and they submit, in behalf of the State and people of Wisconsin, that this road is filling uninhabited forests with towns, mills, and factories, planted there in the full confidence that this road will be speedily finished. Lumbermen, farmers, and miners have bought lands from the United States, at an advanced price, along the line of this road, and many homesteads have been pre-empted and improved on United States lands, upon this understanding. This company has done its utmost to protect these innocent parties, and now is forced to ask the United States for more time on this work.

When a gap of fifty miles, on the whole length of which the company has done work, is graded and ironed, Lake Superior will be connected with Milwaukee and Chicago by continuous track through the timber and iron lands of Wisconsin.

Wherefore, the undersigned pray that the time fixed and limited by the act of May 5, 1864, the completion of the roads provided in section third thereof, be extended until the 1st day of December, 1876.

Signed by,

Gardner Colby, Boston, Mass.
 R. G. Hazard, Peace Dale, R. I.
 Moses Taylor, New York.
 Samuel H. Walley, Boston, Mass.
 J. Wiley Edmands, Boston, Mass.
 J. Warren Merrill, Cambridge, Mass.
 Brewster, Sweet & Co., Boston, Mass.
 E. F. Waters, Newton, Mass.
 Albert Vinal, Boston, Mass.
 R. C. Mackay, Boston, Mass.
 Edwin H. Abbot, Cambridge, Mass.
 C. D. Wood, New York.
 Ferdinand A. Crocker, New York.
 John C. Phillips, New York.
 J. Q. Preble, New York.
 Barney & Smith Mfg. Co., Dayton, Ohio.
 By Preserved Smith, Vice-President.
 Charles A. Gregory, Chicago, Ill.
 Horatio Lyon, Monson, Mass.
 Henry Ingalls, Wiscasset, Me.
 J. W. Converse, Boston, Mass.
 Leonard A. Jones, Boston, Mass.
 D. Waldo Lincoln, Worcester, Mass.
 Eff'm. H. Nichols, New York.
 Hilton, Weston & Co., Boston, Mass.
 Charles W. Lord, Boston, Mass.
 E. B. Phillips, Chicago, Illinois.
 Martin P. Stetson, Abington, Mass.
 Page, Richardson & Co., Boston, Mass.
 Frank W. Andrews, Boston, Mass.
 George Howes, San Francisco, California.
 William T. Glidden, Nahant, Mass.
 Edward D. Mandell, New Bedford, Mass.

Charles R. Tucker & Co., New Bedford, Mass.
 Samuel Gould, Boston, Mass.
 A. I. Benyon, Boston, Mass.
 George C. Lord, Boston, Mass.
 Lee, Higginson & Co., Boston, Mass.
 Alvin Adams, Boston, Mass.
 P. K. Randall, Boston, Mass.
 S. G. Rogers, Boston, Mass.
 William Mackay, New York. By Geo. H. Mackay.
 John A. Stewart, New York.
 Geo. W. Simpson, 118 Wall Street, New York.
 H. D. Brookman, New York.
 A. B. Capwell, New York.
 R. P. Buck, New York.
 E. E. Barney, Dayton, Ohio.
 John Davis Washburn, Worcester, Mass.
 Benjamin Sewall, Newton, Mass.
 William W. Crapo, New Bedford, Mass.
 Charles C. Burr, Newton, Mass.
 Mark Healey, Boston, Mass.
 Richard Stone, jr., Boston, Mass.
 Cambria Iron Co., Philadelphia, Pa.
 By E. Y. Townsend, President.
 George Lawton, Boston, Mass.
 George Reed, Milwaukee, Wis.
 J. K. Baker, Dennisport, Mass.
 Royal E. Robbins, Boston, Mass.
 Charles E. Ranlett, Newton, Mass.
 Charles Deane, Cambridge, Mass.

B.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The memorial of the legislature of the State of Wisconsin respectfully represents to your honorable bodies :

Whereas it is represented by the Wisconsin Central Railroad Company, that by act of Congress approved May 5, 1864, certain lands were granted to aid in the construction of a railroad from Portage City, Fond du Lac, Berlin or Doty's Island, as the legislature of Wisconsin might designate, in a northwesterly direction to Bayfield, and thence to Superior, on Lake Superior, and by the provisions of chapter 314 and chapter 362 of the private and local laws of the legislature of the State of Wisconsin for the year 1866, the Winnebago and Superior and Portage and Superior Railroad Companies were organized with authority to construct a railroad from Portage City via Ripon, Berlin, and Stevens's Point to Bayfield and Superior, on Lake Superior ; also to construct a railroad from Doty's Island via Stevens's Point to Bayfield, and thence to Superior, on Lake Superior, and the lands so as aforesaid granted to the State of Wisconsin were conferred upon said railroad companies by the several provisions of the said acts of the incorporation and upon the terms of the said act of Congress hereinbefore referred to, with some variations from said act of Congress in respect to the initial point and direction of said land-grant railroad, which said change of initial point and direction was afterward, on the 21st day of June, 1866, fully ratified and approved by joint resolution of the Congress of the United States, and the assent of the United States was thereby given to the disposition of the said lands granted to the State of Wisconsin, as the same had been theretofore disposed of by the said several acts of the legislature of said State hereinbefore referred to ; and that neither of the said railroad companies for nearly three years after their incorporation did anything under their said charters and said grant other than to perfect their organization and to accept the trusts conferred upon them by their said acts of incorporation ; and by the provisions of both said acts incorporating the said Winnebago and Superior and Portage and Superior Railroad Companies, the said companies were authorized to consolidate their charters and chartered rights ; and also, by a like further authority, embodied in chapter 257 of the private and local laws of 1869, passed by the legislature of the State of Wisconsin, the said railroad companies were authorized to consolidate and were thereby consolidated under the name of the Portage, Winnebago and Superior Railroad Company ; and did thereafter, on the 14th day of June, 1869, commence the survey and location of its line of road at Portage City, and prosecuted the same to completion to Superior City in or about the month of September of the same year, and in the following October had its maps of said survey and location duly certified by the secretary of state of the State of Wisconsin, and soon thereafter had the same filed in the office of the Secretary of the Interior, at Washington ; and in the following month of November the said lands were ordered to be, and the same were then, withdrawn from the market. Between the time of the approval of said act of Congress, May 5, 1864, and the withdrawal from the market of said lands, considerable tracts of the most valuable part thereof had been purchased of the Government and selected by the Fox and Wisconsin River Improvement Company.

And it is further represented by said company that by the provisions of chapter 27 of private and local laws of 1871, passed by the legislature of said State, the name of said Portage, Winnebago and Superior Railroad Company was changed to that of the " Wisconsin Central Railroad Company."

And it is further represented by said company, that this company, during the year 1870, expended nearly one hundred thousand dollars in location and preparation of its line of road ready for the work of construction, which was commenced in May, 1871, and it has finished, equipped, and is now operating two hundred miles of its road, and has entered and worked upon the entire route to Ashland, and laid track from both ends.

And it is further represented by the said company that extraordinary obstacles, not to be foreseen, and great national calamities beyond its control have alone prevented the work from being finished from Portage City and Menasha to Ashland.

And it is further represented by said company that the natural obstructions to be overcome are great. From Wisconsin River the road is an avenue of heavy clearing, bordered by an almost unbroken line of trees. The labor of clearing and grubbing is enormous ; heavy cuts have to be made, large streams and deep ravines have to be crossed, and many bridges, some of wood and some of iron, have already been built. One of these bridges, made of wrought-iron, built by this company in the heart of the woods, is 1,600 feet long and ninety feet high. The company have done all its work in the most thorough manner. Its ties are nine feet long, and twenty-eight hundred and twelve to the mile ; its road-bed is already ballasted for nearly the whole distance ;

its iron rails are of American make, weighing fifty-seven pounds to the yard ; its stations, water-tanks, motive-power, and rolling-stock are all of the best style and quality ; the road and equipments are, in all particulars, first-class.

And it is further represented by said company that the first cost has been great. The character of the ground has rendered construction unusually expensive. An army of laborers had to be worked, fed, and housed in a wilderness of the heaviest of timber, destitute of roads and remote from habitations. The company has already expended more than six millions of dollars in money in its construction.

And it is further represented by said company that there remains fifty miles to be finished between Ashland and Milwaukee, and some eighty miles between Ashland and Superior City, and seventy miles between Stevens's Point and Portage City, and it is impossible to have the same completed within the time limited by the grant.

And it is further represented by said company that from the time when active operations were begun on this railroad, there has been a succession of disasters which would have utterly broken down a corporation of less energy and resources. Unpropitious seasons for laboring in the forests, the Franco-German war, the Alabama claims excitement, the panics abroad and at home, and the terrible fires in Chicago and Boston have followed in close succession, and have made it impossible to accomplish the work within the time limited in the grant. Your memorialists further represent that said company alleges that it has struggled hard to complete its road through to Lake Superior within the period limited in the act of Congress of May 5, 1864 ; that it has encountered natural obstacles far worse than was anticipated ; that it is building through a wilderness a road which never would have been undertaken, and which never can be completed, without the aid of this entire congressional grant ; that it has been baffled and forced to ask more time, not through any fault or neglect of its own, but by great public misfortunes and great natural obstacles which could not have been anticipated.

And it is further represented by said company that this company has proved its good faith and energy ; that it continued its work after its completion before May 5, 1874, became manifestly impossible, relying upon the justice of its claim to additional time ; that it urges in its own behalf its constant good faith, its persistent labor, its extraordinary efforts, and the difficulty of its undertaking ; and it submits in behalf of the people of Wisconsin that this road is filling uninhabited forests with towns, mills, and factories, planted there in full confidence that this road will speedily be completed ; and lumbermen, farmers, and miners have bought lands from the State and the United States along the line of this road, and many homesteads have been pre-empted and improved on United States lands upon this understanding ; that this company has done its utmost to protect these innocent parties ; and the company is now forced to ask the United States for more time on this work.

Your memorialists further represent that when a gap of fifty miles, on the whole length of which the company has done work, is graded and ironed, Lake Superior will be connected with most of the Michigan lake-ports from Green Bay to Chicago, and when the link of road is completed from Stevens's Point to Portage City it will be connected with the most important towns in the south half of the State by continuous iron track through the timber and iron lands of Wisconsin.

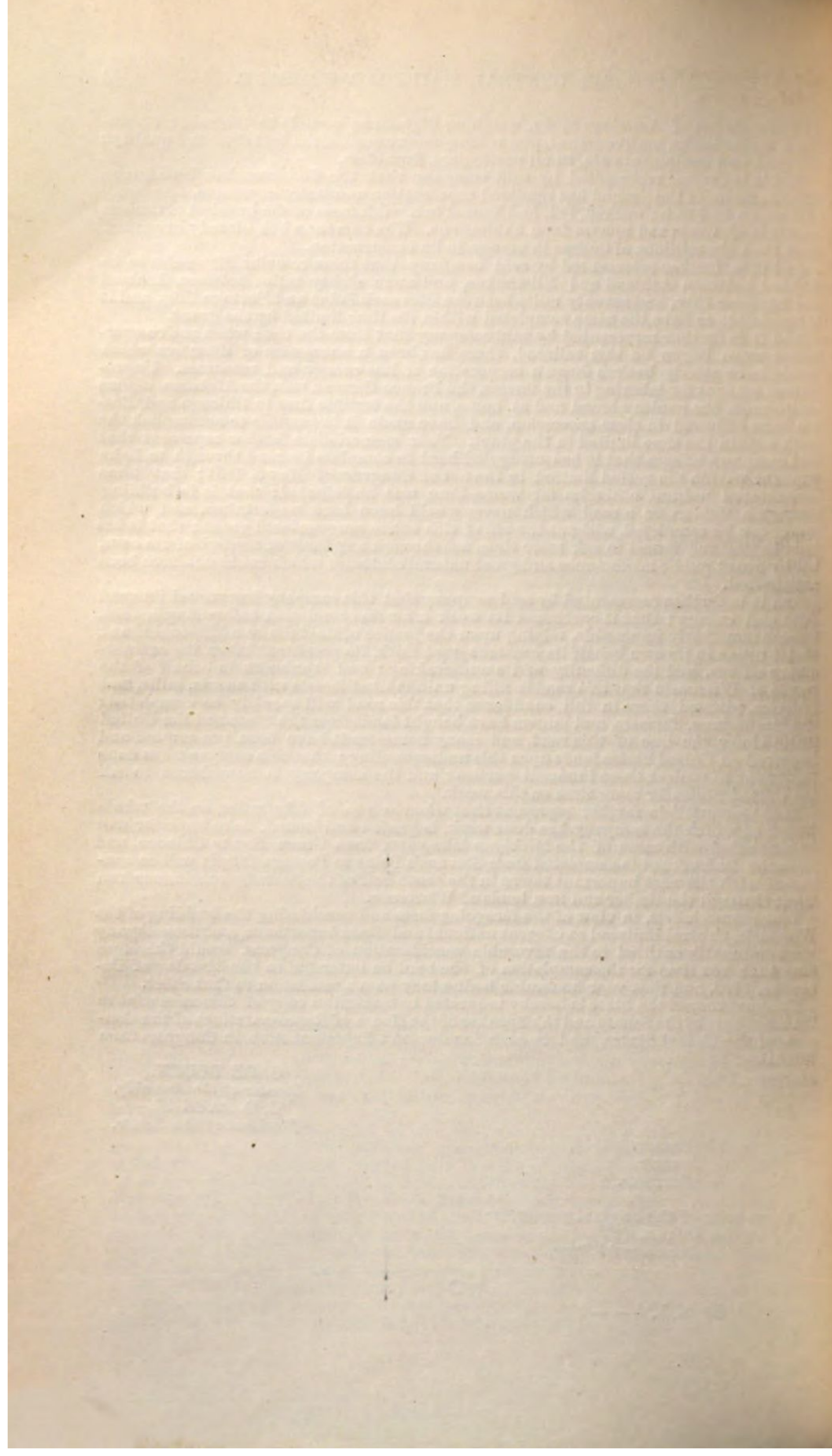
Your memorialists, in view of the foregoing facts and considering the building of the Wisconsin Central Railroad as of great national and State importance, and the company most eminently entitled to the favorable consideration of Congress, would therefore pray that the time for the completion of the road be extended to the 31st day of December, 1876, and that your honorable bodies may pass a resolution to that effect.

The governor of the State is hereby requested to transmit a copy of this memorial to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, and to each Senator and Representative in Congress from this State.

GABE BOUCK,
Speaker of the Assembly.
C. D. PARKER,
President of the Senate.

Approved February 5, 1874.
W. R. TAYLOR,
Governor.

A true copy of the original memorial :
PETER DOYLE,
Secretary of State.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1874.—Ordered to be printed.

Mr. DAVIS submitted the following

R E P O R T :

The Committee on Claims, to whom was referred the petition of Julia A. Nutt, administratrix and widow of Haller Nutt, deceased, report :

The claimant represents that she now resides near Natchez, Adams County, Mississippi; that said Haller Nutt was in 1864 the owner of a plantation known as Winter Quarters, near Saint Joseph, in the parish of Tensas, Louisiana, and that his estate is present owner of the same. She further represents that in the spring of 1864 a considerable quantity of property was taken off of said plantation by Federal troops, for the use of a portion of the Federal Army, known as the Mississippi Marine Brigade, under command of Gen. Alfred W. Ellitt, but that the parties taking it or authorizing it to be taken are unknown to her; that the property taken consisted of—

27 horses and mules, @ \$150 per head.....	\$4, 050
100 loads of fodder, @ \$15 per load.....	1, 500
4,000 cords of wood, @ \$6 per cord.....	24, 000
1,200 acres of corn, 80 bushels to the acre, @ \$2 per bushel.....	192, 000
1,200 acres of peas, 40 bushels to the acre, @ \$2.50 per bushel	120, 000

Amounting to a total sum of..... 341, 550

That 800 acres of the corn and 800 acres of the peas were destroyed by fire. That no vouchers, receipts or other writings were given, nobody but colored servants being on the plantation at the time. That she and her husband were loyal to the United States Government during the late war, and that the claim has never before been presented to any officer or Department of the Government.

The claimant makes affidavit to her petition, but she appears to know nothing personally of the taking of the property, as alleged, and her claims are unsubstantiated by any other testimony whatever.

The committee recommend the claim ought not to be allowed.

REPORT

The following report was made by the Committee on the subject of the proposed amendment to the Constitution of the United States, in relation to the right of suffrage, at the meeting of the Committee on the 10th of January, 1870.

The Committee have the honor to acknowledge the receipt of the report of the Committee on the subject of the proposed amendment to the Constitution of the United States, in relation to the right of suffrage, at the meeting of the Committee on the 10th of January, 1870.

The Committee have the honor to acknowledge the receipt of the report of the Committee on the subject of the proposed amendment to the Constitution of the United States, in relation to the right of suffrage, at the meeting of the Committee on the 10th of January, 1870.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Susan Vincent, praying the repayment of a balance of money advanced, &c., beg leave to submit the following report :

It appears that this case has been here for many years, in the name of Frederick Vincent, administrator of James Le Caze, claiming payment of a balance of \$4,890.82, shown to be due for money advanced to the Government by Le Caze and Mallett during the revolutionary war, with interest on the same for more than half a century, and this interest is the foundation of the claim now presented. The legislative history of the case is as follows :

Twenty-ninth Congress—referred to Revolutionary Claims Committee ; no report. Thirtieth Congress—referred to Revolutionary Claims Committee ; report 113, and accompanying it bill S. 199. Rejected by the Senate. Thirty-first Congress—referred to Revolutionary Claims Committee ; no report. Thirty second Congress—referred to Revolutionary Claims Committee ; report 103, accompanying bill S. 266. No action upon the bill by Senate. Thirty-third Congress—referred to Revolutionary Claims Committee ; report 250, with bill S. 361. Passed Senate. (This bill allowed amount claimed, \$4,890.82 with interest.) The House, after amending it by striking out the allowance of interest, passed the bill. Senate concurred. Approved January 31, 1855. (See 10 Stat. at L., 868.) It appropriates \$4,890.82, “ provided that the same shall be received in full of all demands against the Government on this account.”

Nevertheless, the case appears again in the Thirty-fourth Congress, claiming the interest refused by Thirty-third Congress. Thirty-fourth Congress—petition introduced, referred to Committee on Claims. Thirty-fifth Congress—Committee on Claims return papers ; referred to Committee on Revolutionary Claims ; report 360, and Senate bill 537 ; no action by Senate. Thirty-sixth Congress—referred to Committee on Revolutionary Claims ; report 139 ; bill 275 ; bill passed Senate ; favorable report in House, but no action. Thirty-seventh Congress—referred to Committee on Revolutionary Claims ; no report. Thirty-ninth Congress—referred to Committee on Revolutionary Claims ; adverse report, No. 85 ; re-committed, but no further report. Fortieth Congress—referred to Committee on Revolutionary Claims ; no report. Forty-first Congress—referred to Committee on Revolutionary Claims ; report 200 ; bill S. 966 ; no action. Forty-second Congress—referred to Committee on Revolutionary Claims ; report 144 ; bill S. 1020 ; no action.

The petition now before us was filed on the 13th instant, and is in the name of Susan Vincent, as the widow of Frederick Vincent, who, as she says, was *the administrator and next of kin* of James Le Caze, the survivor of Le Caze and Mallet, the original claimants.

As the case stands, there are two objections to granting the prayer of this petition, one going to the facts and the other to the substance.

First. Petitioner asks the Government to pay this money to her, showing simply that she is the widow of Frederick Vincent, "*who was the administrator and next of kin of Le Caze.*" Whether she is next of kin to Frederick does not appear. She does not take the money in any representative capacity. It is but too manifest, therefore, that if the claim could be allowed to any one it cannot to her.

Second. As shown above, Congress, on the 31st of July, 1855, passed an act allowing \$4,896.82, (the principal sum,) with a proviso that "the same shall be received in full of all demands against the Government on this account."

This sum was paid, and receipted for by Frederick Vincent, and the claim now made is for the *interest*, what, it will be seen, was rejected or denied in 1855. If allowed for the whole time, it would amount to about \$27,000, or if from the time the claim was first made, (1844,) about \$9,000. The claim was originally for "advances made and supplies furnished to the United States during the revolutionary war under an adjustment by the Department of Finance," the balance being duly stated, under date of July 1, 1784, and reported to Congress.

The principal has been paid, and we are now asked to pay the interest. In view of the act of 1855, to pay no more, we are not prepared to so recommend. The claim was then old and stale. Congress, with, as we must presume, a full knowledge of all the facts, refused to pay the interest, the question of said payment being, as will be seen, duly considered. Nothing is shown to make this case exceptional. The money was received, as far as shown, with a full knowledge of all facts and all rights. This ought to be, and must be, taken as a finality.

The committee therefore ask to be discharged from the further consideration of this claim.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1874.—Ordered to be printed.

Mr. SCOTT submitted the following

R E P O R T :

[To accompany bill S. 384.]

The Committee on Claims, to whom was referred the bill (S. 384) for the benefit of the Louisville and Bardstown Turnpike Road Company, submit the following report :

This claim was formerly reported upon in the first session of the Thirty-eighth Congress, by the Committee on Military Affairs of the House of Representatives, (report No. 121,) and again by the Committee on Claims in the Forty-second Congress, second session, (report No. 30,) when it passed the House, and was formerly reported by the Senate Committee on Claims, but failed to receive final action.

The report made in the Forty-second Congress was as follows :

The Committee on Claims, to whom was referred the claim of the Louisville and Bardstown Turnpike Road Company, submit the following report :

That the petitioner is the owner of the turnpike road leading from Bardstown toward Louisville to the junction with the road of the Louisville Turnpike Company, ten miles from the city of Louisville, in the State of Kentucky.

That on the 22d day of September, 1862, two bridges on the complainant's road—one over Salt River and one over Floyd's Ford—were, by order of Major-General Nelson, commanding the United States forces, destroyed for the purpose of hindering and retarding the movements of the enemy, then on his celebrated march toward Louisville from the South. The destruction of the bridges fully appears by the orders of General Nelson, in the hands of the committee, and the certificates indorsed thereon by the officers who executed them.

The company, immediately after these transactions, made a claim before the Quartermaster-General for compensation for the bridges destroyed, but the Quartermaster-General was of opinion that he had not the necessary legal authority to pay such a claim, and for that reason the claim in that form was abandoned. It was at the same time, however, suggested to the Quartermaster-General that the immediate rebuilding of said bridges would be of imperative necessity to the military service, to which he assented, and himself proposed that the turnpike company should proceed at once to rebuild the bridges, and rely on Congress to repay it for the outlay. This course seemed necessary on account of the dangerous floods to which those streams are subject, which rendered it inexpedient to build temporary bridges, as the Quartermaster's Department was in the habit of doing. All these facts appear in the communications from the Quartermaster's Department.

The committee find that a report was made by Hon. Mr. Schenck, from the Military Committee in the Thirty-eighth Congress, fully sustaining this claim, but which was not finally acted upon by the House. The report is printed, and this committee fully concur in its statements and conclusions. The passage of the accompanying bill is therefore recommended, upon the ground that the two bridges were rebuilt by the petitioner, to the great advantage of the military service, in pursuance of the recommendation of the Quartermaster-General, fully believing that Congress would repay the outlay thus incurred, and having good reason so to believe.

The amount claimed to have been paid for the reconstruction of the bridges is \$14,057.37, which is probably correct, but the committee prefer that the amount to be paid for replacing the bridges shall be audited by the Quartermaster-General, and paid by him. They have, therefore, adopted the bill of the Committee on Military Affairs, reported to the Thirty-eighth Congress, and recommend its passage.

This is a correct general statement of the case, and is concurred in by the committee, with this modification, that instead of allowing the company the cost of rebuilding the bridges, the sum to be paid should not exceed the actual value of the superstructures at the time they were burned, and they, therefore, report the bill with the limit fixed by the amendment recommended by the Senate committee in the Forty-second Congress, of \$13,600, as the maximum sum that may be allowed, and recommend its passage.

O

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1874.—Ordered to be printed.

Mr. MORRILL, of Vermont, submitted the following

R E P O R T :

[To accompany joint resolution S. R. 6.]

The Committee on Public Buildings and Grounds, to whom was referred, on the 13th of February, 1874, the following resolution—

Resolved, That the Committee on Public Buildings and Grounds be instructed to consider the expediency of providing for the protection of the statue of Jefferson now in the open air in the grounds of the Executive Mansion, the same being a work of art by an eminent French sculptor,

beg leave to submit the following report :

From an examination of the records it would appear that some confusion has taken place as to the action of the Senate and House of Representatives in relation to the bronze statue referred to in the resolution. The late Commodore Levy, at the time (1834) a lieutenant in the United States Navy, procured, at his own cost, a colossal bronze statue of Thomas Jefferson, by the celebrated sculptor David, and, through Congress, presented the same to his fellow-citizens of the United States. The following letter from Lieutenant Levy was presented to the House of Representatives March 25, 1834 :

WASHINGTON, March 23, 1834.

To the House of Representatives of the United States :

I beg leave to present, through you, to my fellow-citizens of the United States, a colossal bronze statue of Thomas Jefferson, author of the declaration of our independence.

This statue was executed under my eye, in Paris, by the celebrated David and Honoré Genon, and much admired for its likeness to the great original, as well as the plain republican simplicity of the whole design.

It is with pride and satisfaction I am enabled to offer this tribute of my regard to the people of the United States, through their Representatives, and I am sure such disposition will be made of it as best corresponds with the character of the illustrious author of the declaration of our independence, and the profound veneration with which his memory is cherished by the American people.

With profound respect, I have the honor to be,

Your obedient and very humble servant,

U. P. LEVY,

Lieutenant in the United States Navy.

The records show that Mr. Patton said that he had been requested by Lieutenant Levy to make the requisite motion in reference to the patriotic donation. In accordance with precedents, he moved it be referred to the Joint Committee on the Library.

The next action of the House was on June 27, 1834, when Mr. Ed-

ward Everett, from the Joint Committee on the Library, reported a resolution, directing—

That the statue of Mr. Jefferson, presented to Congress by Lieutenant Levy of the Navy, be placed in the square at the eastern front of the Capitol.

Mr. Archer said he had some objections to the resolution. He conceived that, if Congress desired to have a statue of this distinguished man, it would be more consistent with propriety to procure one for themselves than to be indebted for it to any person whatever. He had another objection; which was, that as Congress had resolved to erect a statue in honor of the great and good Father of his Country, the immortal Washington, and which was in progress of execution, none other of any other man should be set up until that duty was performed, which they had resolved should be done. He learned that this statue of Jefferson was not of that finished order of which, if a statue was to be put up at all in the grounds of the Capitol, it ought to be.

Mr. Lane trusted that the House would not reject the resolution merely because the statue had been presented by a lieutenant instead of a commander.

Mr. Mercer concurred in the opinion of his colleague, that it was not a good likeness, and he was opposed to the resolution.

Mr. Edward Everett would merely remark that, as he had reported the resolution, with the instructions of the committee, he would now leave the decision upon it to the House.

Mr. Clay, of Alabama, remarked that the adoption of the resolution would not prevent them hereafter either from erecting another statue or changing the site that was now contemplated.

The resolution was finally ordered to be engrossed, and was passed—ayes, 69; noes, 55.

A resolution was introduced, February 16, 1835, by Mr. Jarvis, in the House, from the Committee on Public Buildings and Grounds, as follows:

Resolved, That the Commissioner on the Public Buildings and Public Grounds be directed to remove the bronze statue of Jefferson from the Rotunda to some suitable place for its preservation, until the final disposition of it be determined by Congress.

Some debate arose thereupon, and Mr. Mason inquired if the House had accepted the statue. He understood that the House had accepted it, and the Senate refused. Under these circumstances he thought the owner, Lieutenant Levy, ought to be allowed to take back the statue.

Mr. Mercer said that a present ought not to be accepted from any but a distinguished source.

Mr. Adams thought the motion in its present form was not respectful to the donor of the statue, especially after the House had voted to accept it. He should prefer that directions should be added for the returning of the statue to the owner.

The discussion was cut off by a motion of Mr. Polk that the House pass to the order of the day, which prevailed. No other action of the House has been found.

It appears that the letter of Lieutenant Levy was communicated to both Houses of Congress, and the Vice-President laid before the Senate the copy he had received, March 24, 1834, which was referred to the Joint Committee on the Library.

On May 6, 1834, Mr. Robbins, from the Joint Committee on the Library, made the following report:

That they have received from Lieutenant Levy the statue, and recommend that it be placed in the center of the square in the eastern front of the Capitol.

In fulfillment, also, of their sense of duty, they have addressed to Lieutenant Levy a letter of acknowledgments, a copy of which they submit to the Senate, as part of their report, with a view that the same be spread upon its journals.

CITY OF WASHINGTON, *March 27, 1834.*

DEAR SIR: I have been instructed by the Joint Library Committee of the two Houses of Congress to express to you their thanks for the present you have made to the people of the United States in the colossal bronze statue of Thomas Jefferson. It is every way fit and proper that the statue of the author of the Declaration of American Independence should find a place at its Capitol. This would, doubtlessly, sooner or later, have been ordered by the Representatives of the States and the people. You, sir, have only anticipated their action, and have manifested in so doing a devotion to the principles contained in that celebrated instrument equally felt by all classes of your fellow-citizens.

I have the honor to be, with sentiments of great respect, your most obedient servant,
 ASHER ROBBINS,
Chairman.

URIAH P. LEVY, Esq.,
Lieutenant United States Navy.

The Senate proceeded, May 13, 1834, to consider the report of the Joint Library Committee on the letter of Lieutenant Levy, presenting the statue of Jefferson, and

Resolved, That the Senate concur therein.

It would appear from this examination of the subject that the object of Lieutenant Levy could have been none other than liberal and patriotic; that Congress, through the action of its Joint Committee on the Library, accepted the statue, and by letter communicated thanks and a respectful acknowledgment to Lieutenant Levy; that the Senate proceeded on May 13, 1834, to consider the report of the Joint Committee on the Library, made May 6, 1834, accepting the statue and recommending that it be placed in the center of the square in the eastern front of the Capitol; that the House passed a joint resolution June 27, 1834, soon after the donation had been made, directing the statue to be placed in the square east of the Capitol.

In substance the two Houses seem to have agreed and concurred as to the locality where the statue should be placed. Both Houses acted on motions originating from the Joint Committee on the Library, and it might seem fair to infer that it was on the same resolution, notwithstanding the minor discrepancies of the record, only that the action of the House was of a later date than that of the Senate, whose concurrence was then also asked. There was further action of the House asked for in 1835 by the Committee on Public Buildings and Grounds, but none was taken; whether because no further action was actually necessary does not appear. The record, it must be confessed, is confused and rather unsatisfactory, but it would seem that it was the intention of Congress to accept, certainly not to refuse, the statue offered, and it has been in our possession for forty years.

In addition to these statements, the Committee on Public Buildings and Grounds have received from Jonas P. Levy, brother of the late commodore, the following letter, viz:

WASHINGTON CITY, D. C., *February 16, 1874.*

SIR: Some forty years ago my brother, then Capt. Uriah P. Levy, of the United States Navy, at a great expense to himself, while in Paris, had models of a statue of Thomas Jefferson made, and upon a satisfactory one being executed by the then celebrated sculptor, David, he had cast the present statue out of bronze, silver, &c., of Jefferson. He afterward shipped it to New York, with the model, that being bronzed. This latter my brother presented to the city authorities, who accepted it, and placed it in his excellency the governor's room, where it now stands as an emblem of his patriotism. The authorities of the city voted to him (my brother) the freedom of the

city, and presented him with a gold snuff-box, the statue being such a striking likeness to the great statesman, and so pronounced by the best critics of that date.

My brother then had the present bronze statue brought to this city of Washington, at his own expense, and it was placed in the center of the rotunda of the Capitol, (where it should have remained,) and presented to the Congress of that date. Objections were made by Congress to receiving a present from an officer of the United States Navy, and, consequently, the statue was removed from the Capitol, and, by permission of President Polk, placed in the President's grounds in the north front, where it remained until quite recently.

The resolution lately presented by Hon. Charles Sumner, United States Senator, for the preservation of said statue, suggests to me the propriety of requesting of you, as chairman of your committee, that as the statue has never been properly received by Congress, you will please have offered a resolution to that effect. There cannot now be any objection to receiving it upon the grounds formerly made; besides, I desire to honor the name of Jefferson and the memory of the would-be donor, who was a meritorious officer in the United States Navy for fifty years, and at his death the owner of Monticello, Virginia, the home of Jefferson, the same being now held by his heirs. In this connection I may add that quite an interest is now felt for anything which could or would affect the memory of the sage of Monticello, Virginia, that great man, Thomas Jefferson, and the memory of my brother, the late Commodore Uriah P. Levy, the father and author of the abolition of corporal punishment in the United States Navy.

If the statue is not accepted by Congress, I have to request, as one of the heirs to the said property and its recent owner, that the statue may be turned over to us with as little delay as possible, and in as good condition as it now appears in. Besides, it being the only thing at the national capital, except the Declaration of Independence, which we have to perpetuate the memory of the great statesman, we will preserve it, that it may bring to generations to come the memory of the great men of our great and glorious Union.

I have the honor to subscribe myself, with high esteem, yours, truly,

JONAS P. LEVY.

HON. JUSTIN S. MORRILL,

*Chairman of Committee on Public Buildings and Grounds,
United States Senate, Washington, D. C.*

From this letter it is evident that the brother of Lieutenant Levy has the impression that the question of acceptance by Congress of the statue is still undetermined, and, if there is any doubt about it, that doubt should be at once removed. The statue for a long time held a place in the rotunda of the Capitol, but was removed during the administration of President Polk to the front of the Executive Mansion, and it now stands on the grounds east of the Executive Mansion. The bronze of which it was made, judging from present appearances, cannot have been of the best quality, and from recent exposure in the open air to the weather has received some injury which will be likely to be increased if it should so remain. If placed under cover, with a small expenditure for cleaning and the repair of some defects, it would at least be restored to a position where it would not be seemingly an object of neglect and reproach. It bears on one side of the base the following inscription :

PRESENTED BY URIAH PHILLIPS LEVY, OF THE UNITED STATES NAVY,
TO HIS FELLOW-CITIZENS.
1833.

The inscription on the other side is as follows :

FONDU À PARIS PAR HONORÉ GENON ET SES DEUX FILS.
P. J. DAVID, D'ANGERS, SCULPT. 1833.

The sculptor thus appears to have been Pierre Jean David, of Antwerp, who acquired a wide celebrity by many and various works, whatever differences of opinion may now be entertained as to the artistic merits of his statue of Jefferson.

The act of Lieutenant Levy was an honest effort to do honor to one of our earliest and most distinguished American statesmen, the author of

the Declaration of Independence, and as such is entitled, from first to last, to be treated with due consideration. It was a liberal gift of an officer of the Navy, then young, which did not at the time meet with a rebuff, though coldly greeted by some of the Representatives of Virginia, and is deserving of none now ; but it was, at one time or another, accepted by each House of Congress, and with the courteous thanks of the Joint Committee on the Library.

The present condition of the statue very naturally awakened the solicitude of the brother of the late Commodore Levy, who properly desires to reclaim it, if it has been or shall be rejected, and furnishes a fit occasion to rectify the congressional record upon the subject, as well as for the adoption of some measure for the preservation of a gift made to the citizens of the United States.

Your committee therefore recommend the adoption of the following joint resolution :

Whereas it appears the late Commodore Uriah P. Levy, while a lieutenant of the United States Navy, in 1834, procured in Paris a bronze statue of Jefferson, by the celebrated sculptor David, which was presented by him through Congress to his fellow-citizens of the United States, and to which attention is now called by his brother, Jonas P. Levy, who requests that the statue, if not accepted by Congress, shall be returned to the heirs of the late Commodore Levy : Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the bronze statue presented in 1834 by Lieutenant Uriah P. Levy, of the United States Navy, of Thomas Jefferson, be accepted with grateful appreciation, and that the officer in charge of public buildings and grounds be directed to properly prepare and place the same in the National Statuary Hall of the Capitol.

S. Rep. 138—2

THE STATE OF NEW YORK
IN SENATE
January 14, 1892.
REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 1, 1891.
ALBANY:
J. B. LEECH, STATE PRINTER.
1892.

ALBANY, N. Y., JANUARY 14, 1892.

SIR:

I have the honor to acknowledge the receipt of your letter of the 10th inst., and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Your obedient servant,
J. B. LEECH,
COMMISSIONER OF THE LAND OFFICE.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Richard H. Conner, of Company I, Sixth Regiment of Indiana Volunteers, for arrears of pension, have had the same under consideration, and report :

That said Richard H. Conner was a private in the company and regiment, and served faithfully, as stated in his petition ; that he was in good health when he entered the service, served for more than three years, and was disabled, as stated in his petition, and is still disabled, from disease contracted in the service in the line of duty, from earning a support by manual labor. The reason stated by petitioner for not having applied for a pension within the limitation of five years prescribed by statute to enable pensioners to draw pension from the date of disability, that he did not know there was such a law, we do not feel would justify the committee in recommending favorable action upon the petition. We think to go back and grant pensions for past years upon the ground that the party is now drawing a pension, and therefore might have drawn upon the Government bounty before had he applied, or had desired to do so, will, in effect, amount to a repeal of the statute upon that subject, which ought not to be done except upon the gravest consideration, and therefore ask to be discharged from the further consideration of this case.

IN THE SENATE OF THE UNITED STATES

January 12, 1871—Ordered to be printed.

Mr. GORHAM submitted the following

HYPOTHESIS

The Committee on Finance is asked to report on the petition of Richard H. Connor, of New York, for a pension, on the ground that he was disabled by disease contracted in the service of the United States Army, and is still disabled.

That said Richard H. Connor was a private in the company and regiment, and served faithfully, as stated in his petition; that he was in good health when he entered the service, served for more than three years, and was disabled, as stated in his petition, and is still disabled, from disease contracted in the service in the line of duty, from earning support by manual labor. The reason stated by petitioner for not having applied for a pension within the limitation of five years prescribed by statute to enable pensioners to draw pension from the date of disability, that he did not know there was such a law, we do not feel would justify the committee in recommending favorable action upon the petition. We think to go back and grant pensions for past years upon the ground that the party is now drawing a pension, and therefore might have drawn upon the Government bounty before had he applied, or had desired to do so, will, in effect, amount to a repeal of the statute upon that subject, which ought not to be done except upon the gravest consideration, and therefore wish to be directed from the further consideration of this case.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Joanna W. Turner, respectfully report :

That petitioner is the widow of Dr. William D. Turner, who was assistant surgeon of the battalion of Illinois Artillery, at Cairo, Ill., 1861, and continued in the service as such until made surgeon of the 97th Illinois Volunteers. Again, early in 1864, Dr. Turner was, on favorable recommendations, appointed by the President colonel of the 6th Heavy Artillery, (U. S. C. T.,) and afterward changed to the 11th Infantry, (U. S. C. T.,) the same year. He continued in the service until January 12, 1866, when he was discharged. After discharge he settled at Clear Lake, Arkansas, where he died, December 31, 1866, of Bright's disease of the kidneys. The affidavit of Dr. Taggart, with other proof on the same point, shows that Colonel Turner was in good health when he entered the service, and that he was afterward sick with intermittent fever and chills, but recovered, and was subsequently appointed and mustered as surgeon of the 97th Illinois Infantry. There is evidence to show that Colonel Turner was affected with the malarial fevers of the country he was serving in, as thousands of other soldiers were during the war when subjected to sudden exposure, as he was on the march in August, 1864, into Mississippi, after having for a long time been accustomed to and favored with good quarters and a comfortable bed, as G. W. Richardson, who was chaplain of the same regiment, testifies about Colonel Turner previous to the August raid, under General Smith in 1864, above referred to. Colonel Turner remained with his regiment after this sickness, in 1864, until its final muster out of service in January, 1866. On duty, such as it was, it is said by the same witness that Colonel Turner suffered more or less from said disease, and was never a sound man afterward while in the service.

Major John W. Baker testifies to the sickness of Colonel Turner on the raid in August, 1864, and that he was troubled with his kidneys until his discharge. J. W. Davis, lieutenant and quartermaster of the regiment, testifies substantially to the same facts. There is some evidence tending to show that Colonel Turner died of the disease known as Bright's disease of the kidneys. We feel there is wanting that satisfactory proof of disease contracted in the service, which led to and was the cause of his death after discharge. It is by no means a pleasant duty to feel compelled to decide adversely to the earnest wishes of the widow in this case, who evidently believes she is entitled to a pension. We, however, must scrutinize all cases before us impartially, if possible, having in mind that our decisions concern the national Treasury as well as the feelings of petitioners in all cases. We, therefore, ask to be discharged from the further consideration of the case.

IN THE STATE OF THE UNITED STATES

Presented to the Senate and House of Representatives
at their first session, 1871-1872

AND
THE HOUSE OF REPRESENTATIVES

REPORT

OF THE
COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
AND HOUSE OF REPRESENTATIVES, JANUARY 1871

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1874.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

The Committee on Pensions, having had under consideration the petition of Mrs. Elizabeth Biggers, make the following report :

The evidence shows that the deceased was killed several months after his discharge, and that there is no testimony that at the time of his death he was in the military service.

They therefore ask to be discharged from the further consideration of the case.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T:

The Committee on Pensions, to whom was referred the petition of Edward Healy, praying for an increase of his pension, submit the following report:

The petitioner is drawing a pension at present at the rate of \$6 per month, granted him for chronic rheumatism contracted while in the Army of the United States, during the late war, and which disables him in his feet, causing distortion. He insists that his disability is total, not partial; and therefore he asks for a higher pension.

The petition is not sworn to, nor is it accompanied by any proofs. If his case be as stated by him and he can find an examining surgeon in good credit to report that he is suffering a greater disability than he is pensioned for, he can obtain the increase at the Pension Office. He has no pretext for coming here, unless he has made the trial there.

The committee, therefore, ask to be discharged from the further consideration of this petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Virginia A. Hindle for a pension, report:

That petitioner is the only child, there being no widow surviving, of David Hindle, who was sergeant in Company E, Ninth Regiment Veteran Reserve Corps, at the time of his death, in the service, November, A. D. 1865. The only point to be determined is the age of the daughter. The petition states she was 22 years of age in 1872. If under 16 years of age at the time of her father's death, she might have drawn a pension for such period of minority under the pension law. This was not done. It is urged, however, that she is, and has been an invalid for nearly all her life, and has for many years been totally disqualified for manual labor. The evidence fully proves this statement. We are, therefore, asked, for this reason, to depart from the well-established theory of the law, and grant her a pension. It would be pleasant to grant relief in a case so seemingly meritorious, and could we venture to ignore the policy of the law, founded on just reasoning and the experience of so many years, we could, perhaps, find no better case for a departure from its letter and spirit. We hesitate to do so, and therefore ask to be discharged from the further consideration of the case.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 539.]

The Committee on Pensions, to whom was referred the petition of Eugene Smith, have had the same under consideration, and report :

That, upon inquiry at the Pension Bureau, it seems Eugene Smith has not made application there for a pension. His petition in substance states that he has, and has failed to secure a favorable decision there. The case presented to the committee is that he enlisted in 1864 in Company C, First Nebraska Battalion of Veteran Volunteer Cavalry, afterwards consolidated with Company F, of said battalion, as a sound and healthy man, and served until July, 1866, when he was discharged with his company; that while in the service he became diseased with sore eyes, which continued to afflict him until finally he has become entirely blind. David Butler testifies that at the time of enlistment Smith was strong, healthy, and sound in every respect. Henry Kuhl, who was captain of his company, testifies that Smith was free from disease, and that his eyes were not affected at time of enlistment, but that in the years 1864 and 1865, while on duty on the plains against the Indians, guarding United States mail and Government trains, he became afflicted with sore eyes, and was sent to the hospital for treatment, and finally passed inspection of the surgeon for discharge for such disease, but does not state at what time this was done. Smith in his petition, which is not sworn to, says he declined a discharge in that way, as it would take longer than to await discharge by the muster of his regiment out of service. H. S. Dunlap, surgeon in charge at United States Military Asylum, Dayton, Ohio, certifies, January 10, 1874, that Smith was admitted there in May, 1872, and that he is totally blind. We think there is enough proven in the case to entitle him to a pension, and therefore report a bill for that purpose and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

[To accompany bill S. 540.]

The Committee on Pensions, to whom was referred the petition of sundry citizens of Washington County, Vermont, for a pension to Fanny Newcomb, mother of Iremus P. Newcomb, have had the same under consideration, and report :

That it is fully proved that Iremus P. Newcomb enlisted as a soldier in Company H, Sixth Regiment Vermont Volunteers, October 15, 1861, and died of disease contracted in the service April 9, 1862. That Fanny Newcomb, his mother, now about seventy-three years old, made application for a pension in the year 1867, on account of dependence upon her son Iremus for support, and that said application is still pending, "because the facts in regard to the dependence upon her son are not established in such manner as to justify allowance of the same." We have carefully gone over the testimony of all the witnesses, and, without going into a detailed statement of each, we feel there ought not to exist a reasonable doubt, considering all the circumstances, of dependency. In several instances there is positive proof of contributions by the son to the support of his parents before his enlistment, both of money and labor. It was the matter that chiefly concerned him at the time of enlistment. True he was the youngest son; but it is equally true he had resolved to live for and support his aged parents, for upon him they seemed to rely for dependence and support. We feel, therefore, that a prudent caution on the part of the Pension Bureau to exact the fullest proofs under the law ought not to deprive the mother, in a case substantially established, of the benefit of the bounty of the Government—intended for all who lost their children in the service of the country. We, therefore, recommend the passage of the accompanying bill granting a pension to Fanny Newcomb.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 542.]

The Committee on Claims, to whom was referred the bill (S. 273) for the relief of Butler, Miller & Co. and Hawkes, Miller & Co., of Ohio, submit the following report :

The bill directs the Secretary of the Treasury to pay to Butler, Miller & Co. \$14,159.38, and to Hawkes, Miller & Co. \$10,223.42, in full satisfaction and discharge of their claims for cotton taken at Nashville, Tenn., in 1863, by the United States Army.

The principal testimony in the case of the first-named firm is furnished by the Secretary of War, accompanying his letter to the committee dated April 12, 1872. In that letter he states that no record is found in his Department in the case of Hawkes, Miller & Co.

The record furnished by him in the case of Butler, Miller & Co. purports to be certain proceedings had before a board convened by virtue of special field-order No. 71, par. 7, Department of the Cumberland, in which the finding of the board is set out, as also the testimony of the witnesses examined before them. The record begins by saying that the firm appeared as—

Claimants for loss, damage, and expenses accruing on certain bales of cotton alleged to have been taken by military authority for use on the fortifications at Nashville, Tenn.; that the claim was fully stated in the declaration of C. C. Comstock, (agent for Butler, Miller & Co.,) on file and marked "F," and plainly set forth in Butler, Miller & Co's. account against the United States, of which the following is a copy :

The United States to Butler, Miller & Co., Dr.

To 17 bales of cotton, short, marked S. & Co., 7,871 lbs., at 57c	\$4, 486 47
To damages on 22 bales as assessed, S. & Co., 10,192 lbs., at 1½c	152 88
To 17 bales cotton, short, marked W., 8,296 lbs., at 57c	4, 728 72
To damages assessed on 68 bales marked W., 32,489 lbs., at 4c.....	1, 299 56
To 13 bales cotton, short, marked W. E., 5,278 lbs., at 57	3, 008 46
To damages on 44 bales as assessed, marked W. E., 17,881 lbs., at 1c.....	178 81
To J. A. McAllister's bill for drayage, storage, &c	713 30
To William Lyon, bill of rope, bagging, and twine.....	248 89
	14, 817 09

The substance of the testimony of the several witnesses examined is then set out and the conclusion of the board is stated in the following words and figures, to wit :

J. A. McAllister, cotton merchant, and resident of Nashville, Tenn., testifies that during the month of August, 1862, he had in store at his warehouse two hundred and twelve bales of cotton belonging to Spence & Sperry, marked S. & Co.; one hun-

dred and four bales belonging to C. A. Fuller, marked W, and sixty bales belonging to W. G. Elliot, marked W. E., in all three hundred and seventy-six; that said three hundred and seventy-six bales were taken by orders of Generals Rousseau and Negley, about the 5th and 24th days of September, 1862, for use on the fortifications at Nashville, Tenn.; that the said cotton bales were used on the fortifications about six months; that but eighty-seven bales of the lot marked W., and two hundred and forty-one bales and one bag of the lots marked W. E. and S. & Co., were returned, which leaves twenty-seven bales to be accounted for. That Butler, Miller & Co. purchased the whole lot of three hundred and seventy-six bales, belonging to Spence & Sperry, Fuller & Elliott, while it was being used in the fortifications, except a few bales that had been returned before the purchase was made. The above-named parties transferring the receipts obtained of the military authorities for the three hundred and seventy-six bales above-mentioned to Butler, Miller & Co.; they (Butler, Miller & Co.) to stand in their (Spence & Sperry, Elliott & Fuller) place as to claim on the Government for loss or damage. That the cotton was hauled from the fortifications to the warehouse at the expense of Butler, Miller & Co. That on ninety-one bales was paid drayage at \$1 per bale; on one hundred and twenty-one bales, at \$1.25 per bale; and on seventy-one bales, at 50 cents per bale. That he charged \$1 per bale for storage, and 25 cents per bale for repairs on three hundred and twenty-seven bales and one bag. The above expenses were charged to and paid by Butler, Miller & Co. That damages were assessed on one hundred and thirty-four bales by N. E. Alloway and N. K. Griffin, after the same were returned to the warehouse. Alloway charged, and we (J. A. McAllister & Co.) paid (for Butler, Miller & Co.) \$26.00 for his services; that the ordinary rates for storage is 50 cents per bale, but he charged \$1 per bale on Butler, Miller & Co.'s cotton on account of extra handling, incurred in having damages assessed and repairing done. That the price of cotton in Nashville, at the time it was being returned from the fortifications, was about 55 cents per pound. Witness states that the repairs above spoken of were about equally distributed between the lot of one hundred and ninety-three bales, upon which no assessment was made, and the lot of one hundred and thirty-four bales which was assessed. That Butler, Miller & Co. furnished the material to repair said cotton bales, and that he has no interest whatever in this claim.

N. K. Griffin, a member of the firm of A. Hamilton & Co., cotton factors, testifies that he, in company with N. E. Alloway, assessed the damages on a certain lot of cotton, said to belong to Butler, Miller & Co., some time during the months of December and January, 1862-'63; said cotton was stored in the warehouse of J. A. McAllister & Co.; that the result of the assessment so made is the same as shown in Exhibits B and C, on file with this board, viz: Forty-four bales, damaged 1 cent per pound; eighty-six bales, 4 cents per pound; sixty-eight bales, 4 cents per pound; and twenty-two bales, 1½ cents per pound damages. That the cotton so assessed was damaged by exposure to the weather, being wet and to some extent rotten and soiled with mud. Also that the rope and bagging were torn from very many of the bales; that he thinks it was well worth \$1 per bale to haul the cotton from the fortifications to the warehouse. That the price of cotton at the time it was being returned from the fortifications was about 55 cents in the Nashville market; and that in assessing damages they took into consideration the cost of material and labor in repairing the bales.

The testimony of N. E. Alloway corroborates that of N. K. Griffin in every particular.

C. C. Comstock, in his testimony before the board, states that he is interested in this claim to the extent that he has a certain per cent. for his services as agent, and that while he admits the assessment of damages to have covered the cost of material and labor of repairing the one hundred and thirty-four bales upon which assessment was made, he claims that Butler, Miller & Co. ought to be paid for the expense of repairing the one hundred and ninety-three bales upon which no assessment of damages was made.

The board, therefore, concludes that three hundred and seventy-six bales of cotton belonging to Spence & Sperry, W. Y. Elliott & C. A. Fuller, were taken and used on the fortifications at Nashville, Tenn. That while said three hundred and seventy-six bales were being so used, they were purchased by Butler, Miller & Co., (except a few bales which were purchased after being returned to the warehouse;) that forty-seven bales of said cotton were never returned to Butler, Miller & Co., and one hundred and thirty-four bales were damaged while being used in the fortifications as alleged and to the extent alleged, viz: Forty-four bales damaged 1 cent per pound; sixty-eight bales, 4 cents per pound; and twenty-two bales, 1½ cents per pound. That McAllister's bill (Exhibit D) is correct and just, except that he charges on three hundred and twenty-seven bales and one bag, when he should charge repairs on only one hundred and ninety-three bales; the repairs on the other one hundred and thirty-four bales and one bag being provided for in the assessment of damages. That Wm. Lyon's bill for rope, bagging, &c., (Exhibit D,) is not to be allowed, except so much of it as would upon an average be required to repair the one hundred and ninety-three bales upon which damages were assessed. That Butler, Miller & Co.'s charge of 57 cents

per pound for the cotton that was lost in the fortifications is too much, 55 cents per pound being the price established by the evidence. The following statement sets forth fully what, in the opinion of the board, the claimants are entitled to:

<i>United States to Butler, Miller & Co.</i>	<i>Dr.</i>
To 47 bales of cotton, taken by military authority and not returned, weighing 21,277 pounds, at 55 cents per pound *	\$11,702 35
To repairing 193 bales of cotton, at 25 cents per bale †	48 25
To rope, bagging, and twine for repairing 193 bales, at 76 cents per bale ‡	146 78
To storage on 327 bales, at \$1 per bale	327 00
To drayage on 283 bales; that is, 121 bales, at \$1.25 per bale	\$51 25
91 bales, at \$1	91 00
71 bales, at 50 cents	35 50
	277 75
To paid assessment of 134 bales	26 00
To damages on 22 bales of cotton, (as assessed,) weight 10,192 pounds, at 1½ cents per pound	152 83
To damages on 68 bales, (as assessed,) weight 32,489 pounds, at 4 cents per pound	1,299 56
To damages on 44 bales, (as assessed,) weight 17,881 pounds, at 1 cent per pound	178 81
	14,159 38

It will thus be seen that the board found that the claimants, Butler, Miller & Co., were entitled to \$14,159.38, being less by \$657.71 than the amount claimed.

The record does not disclose the names of the officers constituting the board, nor when and where they sat in judgment on this case. The examinations are attested by J. J. Donnelly, captain Fourteenth Michigan Volunteers, who subscribes himself recorder of the board. The witnesses appear to have been sworn, but by whom it does not appear. Their names are as follows: J. A. McAllister, N. K. Griffin, N. E. Alloway, and C. C. Comstock. They were examined on behalf of the claimants and by the board. The theory of the board was that the cotton, that which was missing, was to be paid for by the ruling price at the time it was removed from the fortifications, three months after its original seizure, and not its value at the time of the seizure at the place of the seizure. We say such was the theory, for in looking over the testimony but one question seems to have been asked as to its value at that time; and the finding of the board discloses that its value was assessed at the last named period. When taken, cotton at Nashville was worth only twenty-three cents per pound; when restored it was worth from fifty to fifty-five cents per pound.

With this general statement of the case we come to the facts as established by these witnesses.

McAllister, the first witness, swears that he was a cotton-merchant, of Nashville, and during the month of August, 1862, had stored in his warehouse—

212 bales of cotton belonging to Spence & Sperry, marked S. & Co.

104 bales of cotton belonging to C. A. Fuller, marked W.

60 bales of cotton belonging to W. Y. Elliott, marked W. E.

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* The weights of the missing bales are calculated from an average of the lots of corresponding marks as weighed after being returned from fortifications.

† It being proved by McAllister's testimony that repairing had been done on the ninety-three bales upon which no assessment was made, to an extent equal to that which had been done on the one hundred and thirty-four bales which were assessed, the board allows repairing at the same rate.

‡ That portion of the three hundred and twenty-seven bales upon which assessment was not made, and consequently not provided in the assessment.

That all the cotton was taken about the 5th day of September, 1862, by order of General Rousseau, except twenty-three bales, which were taken by order of General Negley, on or about the 24th day of September, 1862; that all this cotton, except twenty-three bales, was taken to Fort Confiscation; and as to the twenty-three bales the witness does not know where they were used. Part of that taken to this fort was afterward taken away and used on other forts of the city. Tickets were given by Lieutenant Dearduff, as the cotton marked S. & Co. was taken from the warehouse. These were ultimately surrendered to the number of one hundred and eighty nine bales, and a receipt given. The same officer issued tickets for one hundred and two bales, marked W., for which a general receipt was subsequently given. In the same manner tickets were given marked W. E., for sixty bales on September 5, 1862. A general receipt was likewise given. On the 24th of September, 1862, the witness took a receipt from Fred. H. Kennedy for twenty-three bales, marked S. & Co., and on the same day General Negley gave a receipt for one bale marked W., and on September 23, P. W. Halloran gave a receipt for one bale.

This witness swears that the cotton was absent from the warehouse about three months, and that eighty-seven bales of the lot marked W., and two hundred and forty-one bales, and one bag—a part marked W. E. and a part marked S. & Co.—were returned to the warehouse from the fortifications; or three hundred and twenty-eight bales and one bag in all were so returned.

When this cotton was seized, two hundred and twelve bales belonged to Spence & Sperry, one hundred and four to C. A. Fuller, and sixty to W. Y. Elliott. While it was in the fortifications Butler, Miller & Co. purchased all of it, except a few bales, which had been returned to the warehouse from the street, but the number so returned is not given by the witness.

The title to the cotton was passed to Butler, Miller & Co., by the transfer of the receipts which these several parties held, and by agreement, this firm was to be subrogated to all the rights which Spence & Sperry, Fuller & Elliott had for loss, damage, &c., or to adopt the language of the witness, "Butler, Miller & Co. to stand in the place of the several parties as to claims for loss, damage, &c."

It further appears by this witness that this firm paid the expense of hauling the cotton from the fortifications to the warehouse, the storage charges, and the expense of repairing the bales, including the rope and bagging necessary.

Upon the return of the cotton, an assessment of damages was made upon one hundred and thirty-four bales, some of the cotton being wet, rotten, and muddy, and \$26 was paid for this assessment.

What the present claimants paid for the cotton, purchased as it was in the fortifications in its damaged condition, does not clearly appear; nor does the board seem to have thought that an important question, for but one question was asked on the subject; nor was but one question asked as to the price of cotton in Nashville at the time this seizure took place; and this same witness swears that he knew of but one sale about that time, of a lot of sixty-eight bales, which sold at 23 cents per pound. But he adds that there was no transportation for cotton at that time, and consequently there was no market-price.

When questioned as to its price when the cotton was returned, he says there were two or three sales of cotton after this at 55 cents per pound, but how long after he does not say.

Mr. Griffin, the next witness, a tobacco and cotton factor of Nashville, assessed the damages on the returned cotton, in connection with

N. E. Alloway, while it was in the warehouse of J. A. McAllister & Co.

On 44 bales, at 1 cent per pound.

On 68 bales, at 4 cents per pound.

On 22 bales, at 1½ cents per pound.

The damage consisted in much of it being rotten, wet, and soiled with mud. The rope and bagging was off a good many bales.

The cotton used on the fortifications was returned to the warehouse from the 23d of November to the 23d of December, 1862, and was hauled by draymen at \$1 per bale. The market price at the time it was returned was 55 cents per pound.

Mr. Alloway says the assessment of the damages was made in January. He was one of the appraisers, and had been in the cotton commission business. He agrees with Mr. Griffin as to the nature and extent of the damage done the cotton, but fixes the price at from 50 to 55 cents. The principle of the assessment was to fix the amount per bale to make it perfect and in good shipping order. This assessment was made at the request of McAllister & Co.

C. C. Comstock, the last witness, speaks only to the point of the cost of the repairing done on the bales and the cost of the rope, twine, and bagging. And this concludes the testimony taken by the board.

The claimants, with one exception, were not examined, and we are without any light, except that furnished by Spence, who gives us his impression only, upon the question what this lot of damaged cotton cost them while it was in the fortifications, if we shall conclude that to be a material question.

Outside of the evidence taken by the board, we have—

1st. The order, No. 5, of General Rousseau, dated August 30, 1862, impressing the entire stock of cotton-bales then stored in Nashville into the service of the Government:

Captain Morton, of the Engineer Corps, is hereby authorized to take possession of it. The proper receipts will be given for the cotton, and it will be restored at as early a day as possible. The owners are guaranteed against all losses except those which depend upon the fortunes of war.

2d. The statement of John J. Anderson, that the two firms mentioned in this bill had about seven hundred bales stored in Nashville, and which was taken by the military authorities and used in the fortifications, and that an award was made to each firm by the board on account of cotton not returned; that he was present when these awards were made, but cannot state the amounts.

This witness says he procured from Secretary Stanton the order to General Rosecrans to convene the board of review to assess the loss and damages on the cotton that had been in the fortifications. Comstock was the agent of the two firms, who lived at Columbus, and was present during the winter of 1862-'63 in Nashville, and a great part of the cotton taken was returned to him. The witness evidently is mistaken in speaking of the cotton as belonging to them when seized by the military and used in the fortifications.

3d. Mr. Comstock, in an affidavit made in March, 1872, falls into a similar mistake, all the less excusable in him as the agent of these two firms and presumed to be well acquainted with their affairs. Thus, he says a very large amount of the cotton of each of these firms was taken to be used in the fortifications, and that those who took the cotton receipted for the same to *him* as the agent of the firms; whereas the truth is that the receipts were given to Spence & Sperry, to C. A. Fuller, and to W. G. Elliott, from whom Butler, Miller & Co. purchased, taking a transfer of the receipts. This witness represented the firms before the military board, and speaks of the award to Hawks, Miller

& Co., as being over \$10,000. He says he delivered these awards, or rather copies of them, to these firms respectively, and knows the amounts from memoranda now in his possession and made at the time. The gross amount of both was between \$24,000 and \$25,000.

This witness confesses to his interest to the extent of the compensation to be received for his services.

Two observations occur to the committee in connection with this witness's evidence. 1st. The glaring mistake he makes as to the cotton being seized while it was the property of these firms and receipts therefor being given to *him*, tends to throw discredit over his entire testimony. 2d. He does not furnish the data in his possession, from which he estimates the award in favor of Hawks, Miller & Co., and these data must have been quite imperfect, when he can be no more exact than to say it was above \$10,000, and that both awards amounted to between \$24,000 and \$25,000.

Frank McClelland produces an account of Hawks; Miller & Co. against the United States, being a true copy, as he says; from the one before the board, and on which the award was founded. It is—

For 4 bales of cotton	\$1, 105 80
For 4 bales of cotton	1, 105 80
For damages on 58 bales.....	1, 948 65
For damages on 101 bales.....	1, 626 04
For 22 and 68 bales.....	4, 437 13
	10, 223 42

Joseph H. Geiger swears to having had in his possession certified copies of the awards made by the board in behalf of both firms; that they were placed in his hands for collection at Washington; that he presented the claims to Secretary Stanton, who refused payment on the ground that there was no appropriation for that purpose. He then placed the copies in the hands of Hon. Thomas Corwin, for his professional attention, since which time he has not seen them, although he has made careful search through Mr. Corwin's papers. He is not able to state the amount of either award, but thinks the two were about \$25,000.

William Spence, the last witness, proves the purchase by him at Huntsville, Ala., of a large amount of cotton, which he shipped to Nashville, and stored in the warehouse of James McAllister & Co., its seizure and employment in the fortifications, the receipt he received therefor from the military authorities for the number and weight of the bales, and the sale by him of this receipt to Samuel McClelland, one of the firm of Butler, Miller & Co. His impression is he was paid something over 50 cents per pound for the lot, at the weights made out by McAllister & Co. before the cotton was taken to the fortifications. He also states his impression that Hawkes, Miller & Co. had a large amount of cotton they had shipped from Huntsville at the time he shipped his own, and which was taken by the same military order and put into the fortifications, and much damaged, and that their case was considered by the military board. He does not state this as a fact, but an impression.

It is a noteworthy fact that only one member of the two firms offers his testimony, and that this gentleman (Samuel McClelland) says not a word about the purchase of the cotton or its price or the damage occasioned or the extent of the loss. What he swears to, and the only thing he swears to, is a fact next thing to immaterial, as that Charles C. Comstock had not been for the past eight years directly or indirectly interested in the payment of these claims.

It will be seen by this review of the testimony, that, so far as the

claim of Hawkes, Miller & Co.'s case is concerned, we have not the award itself nor a copy of it, but statements that such an award was made for at least \$10,000, and was founded upon an account, a copy of which was taken by Frank McClelland from the record. Where and of whom they bought the cotton, how much was taken, and to whom receipts were given, we know nothing positively. It will be observed that the witnesses speak almost exclusively of the cotton of Butler, Miller & Co. The award before us has no reference to Hawkes, Miller & Co. Not a single member of either firm has volunteered his evidence in support of the claim, except Samuel McClelland, whose affidavit amounts to nothing; nor is there any excuse volunteered for this omission. These firms are said to reside in Columbus, Ohio, a State in which claimants may swear on their own behalf even in courts of justice. Much more could they and should they in a case before Congress. They know or should know better than any one else when and where they bought their cotton, its weight, quality and condition; the price paid, the amount of loss, its value when lost, and what, if anything, they have received on account of it. They possibly could furnish some theory to account for so great a loss of bales out of the number placed in the fortifications.

Butler, Miller & Co. claim to have purchased from the different parties 376 bales, and claim to have lost of this number 47 bales, containing 21,445 pounds, worth 57 cents or	\$12, 223 65
To this they add for drayage, storage, repairs and damages	2, 593 38
	14, 817 03

The board finds they lost 47 bales, containing 21,277 pounds, worth	11, 702 35
The other items allowed as above amount to	2, 457 03
	14, 159 38

In this aggregate was included an item of storage of three hundred and twenty-seven bales, \$327, but on what principle this should be charged to the United States is not perceived. Upon the return of the cotton to the warehouse the liability of the United States should cease.

Returning to the order under which the cotton was seized, the guarantees to the owners are, 1st. That it shall be restored at as early a day as possible. 2d. The owners are guaranteed against all losses, *except those which depend upon the fortunes of war*. The last qualifies the first, and the whole might properly be read as follows: "The United States will restore to the owners as early as possible all the cotton taken in the condition when taken, except as to so much as shall be lost or damaged through the fortunes of war, and as to the cotton so lost or damaged the guarantee shall not operate."

Now, the claimants proceed on the theory that none was lost or damaged by the fortunes of war, and insist as to that lost they shall be paid in full, and as to that damaged an amount equal to the difference between the cotton when taken and when returned. Not only that, but as to the cotton not returned they claim that the loss should be estimated by the market-price of the cotton at the time that not lost was returned.

To test the soundness of this theory, let us suppose the forty-seven bales not returned were lost or destroyed soon after the seizure, and when cotton was worth only 23 cents per pound, what would be the rate of compensation then? The obligation is not to return an equivalent amount of cotton for that lost, for losses by the fortunes of war were contemplated

and provided against. A literal construction of the order would relieve the United States from making compensation for what was thus lost. But to give a liberal construction to the order, compensation for that lost should relate to the time when the cotton was seized. It was then the loss to the owners occurred. If the cotton had burned up next day, the measure of damage to the owners would have been its market value on that day. Now, since there is no proof when the loss in fact occurred or how it occurred, the true principle seems to be to assess the loss by the figure the cotton would have commanded at the time of the seizure.

Upon this principle the 21,445 pounds were worth	\$4,931 35
The other items as assessed by the board were	2,457 03
	7,388 38
From this should be deducted the storage	327 00
	7,061 38
But to this sum total should be added, according to the testimony of McAlister, 50 cents a bale for handling, for inspection and assessment of damages on the 327 bales	163 50
Which would leave due the claimants	7,224 88

This result should not be disturbed by the price paid by Butler, Miller & Co. to the owners while the cotton was in the fortifications. They can lay no claim to a higher rate of indemnity than those under whom they derive title. They bought the owner's claim against the United States, whatever that was, nothing more.

The committee therefore are of opinion that Butler, Miller & Co. on the evidence are entitled to \$7,224.88.

As to Hawkes, Miller & Co's. claim, the committee do not see how they can recommend payment in the present condition of the evidence.

The committee therefore have amended the bill to conform to this finding, and as thus amended they recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1874.—Ordered to be printed.

Mr. SARGENT submitted the following

REPORT:

[To accompany bills S. 65 and S. 31.]

The Committee on Naval Affairs, to whom were referred the bill (S. 65) to authorize the President to restore Captain George Henry Preble, now a captain in the Navy, to his original position on the Navy Register, and promote him to the rank of commodore on the active list; the bill (S. 31) for the relief of Captain L. C. Sartori of the Navy, and the memorial of Commander R. F. R. Lewis, beg leave to submit the following report:

With the conclusions at which the committee have arrived as to the propriety of any legislation advancing applicants upon the Naval Register, it is unnecessary to discuss the showing made by the beneficiaries of the foregoing bills. These cases, as we are informed, are but instances of a whole class awaiting the favorable action of Congress in any one case to be pressed upon our attention, and in every instance the interest of the individual leads him to suppose that his claims are exceptional. The legislation of Congress for the past eleven or twelve years has been directed toward the advancement of officers in the Navy who have merited such advancement by distinguished conduct in battle, or by extraordinary heroism, or by exceptional excellence in their profession, and an attempt has been made to avoid favoritism by submitting the claims of all alike to naval boards of experienced and superior officers by their rank above the temptation of personal interest.

Congress has uniformly followed the recommendations of such boards and made their conclusions binding upon the Navy Department. For Congress now to reverse its former action, and disregard the fairly-presumed intelligent and impartial action of the special tribunals that it has authorized to pass upon these matters, in favor of individuals who have failed to secure such advancement, is, in the view of the committee, most unwise.

An examination of the various acts of Congress relating to this subject, and of the executive action under those statutes, will strengthen the opinion that these various cases of complaint should be dismissed without further legislation.

The first of these acts is that of July 16, 1862, (12 Stats., 583,) which created new official grades and enlarged those already established. In order that promotions under this act might be conferred only upon the most competent and deserving, the Secretary of the Navy was required to appoint, and he did convene, an advisory board to scrutinize the active list and report, after examination, the names of such officers as most deserved promotion. That examination and recommendation

were duly made, and the promotions and appointments promptly followed, while the facts in each case were recent, the proofs in existence, and the memory of events fresh.

Some two years later the act of April 21, 1864, (13 Stats., 53,) allowed all such officers as the above-named board failed to recommend, to go before an examining board, and, if found qualified, to be promoted to the same grade and place as if they had been so recommended.

In 1865 a board of admirals was convened by Secretary Welles, of whose recommendations and the action thereon the following account is given in the annual report of the present Secretary of the Navy for 1869, (pp. 25, 26.)

In the year 1865, a board composed of admirals who had commanded squadrons during the war, with Admiral Farragut as president, was convened by the Secretary of the Navy, to report the names of such officers as they deemed worthy of advancement, under the act of April 21, 1864. The board, after careful consideration, made a report strictly according to the letter of their instructions, and their selection would, it is believed, have been satisfactory to the Navy at large. The recommendations of the board were, however, not acquiesced in, and the advancement was made quite independently of their action. The result is that many officers consider themselves as unjustly treated, and a feeling of discontent exists, most undesirable in the service. Some of the cases affected by this action have been already acted on by the administration. But it is felt that the real merit of each case can only be properly judged of by those who were personally cognizant of all its circumstances, and that too many considerations would be lost sight of in the lapse of time to permit of direct action by the Department without the risk of further mistakes.

The report further said :

It is suggested that the Department be authorized to appoint a board of officers, removed by high rank from all personal interest on this question, to examine the cases complained of, and to report their conclusions for such action by the Executive and Congress as to them may seem proper.

Before noticing the legislative and executive action which succeeded, it should be borne in mind that in July, 1866, (14 Stats., 222,) an act of Congress was passed which authorized the appointment of an increased number of officers in certain grades, by selection from the next lowest grade, and the transfer, by selection, of some volunteer officers to specified grades in the regular Navy, as well as the appointment of a board to examine and report on the claims of all candidates. The only board convened under this act, prior to January, 1871, was for the examination of volunteer officers.

On the 1st of July, 1870, (16 Stats., 383,) pursuant to the suggestion above quoted from the Secretary's report, Congress passed a joint resolution, (No. 93,) under the authority of which the Secretary convened, by order dated January 20, 1871, a board of admirals to examine and report upon the cases of all officers who deemed themselves unjustly passed over by promotions under the act of July 25, 1866.

This revisory board fully examined all such cases, and reported in December, 1871, and their report was transmitted to Congress in January, 1872. Congress sustained and approved that report, and by the act of May 28, 1872, (17 Stats., 163,) carried its recommendations into effect by authorizing the promotions that it advised.

It seems to the committee that, after so many years of continued legislation and executive effort, this perplexed matter should be considered as finally settled and disposed of. Former investigations, when facts were recent, and witnesses and proofs in existence and at hand, were far more likely to be fully and fairly made than is now possible, even by a new board, convened and governed by the most liberal and impartial spirit. Certainly the mode adopted and persisted in by Con-

gress is, for these and other reasons, more likely to do general justice, and save the rights of individuals, than is special legislation by Congress, with little opportunity for investigation, and with the pressure of applicants and their friends to influence its conclusions. Such special legislation is impolitic, and may be mischievous. To now place over the heads of those who have been advanced for gallant and heroic service in battle those who have failed to convince two careful and disinterested boards that they are entitled to special consideration, is to defeat the object of the special promotions. It is to repeal or suspend, for individual benefit, general laws framed by Congress, enlightened by administrative experience and advice, for the welfare of the whole Navy. Such action would also disturb the order of promotions; it would confuse the Naval records, and would violate the fixed limitation of numbers in every grade of the service.

The committee desire to be distinctly understood that they do not cast any reflection upon any of the officers whose cases have been referred to them. But, for the reasons named, they feel constrained to recommend that the bills hereinbefore named be indefinitely postponed.

The memorial of Commander R. F. R. Lewis relates to the same subject, and its determination involves the same considerations. We recommend that the request of said memorialist be not granted, and the committee discharged from the further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1874.—Ordered to be printed.

Mr. BAYARD submitted the following

R E P O R T:

[To accompany bill H. R. 253.]

The Committee on Finance, to whom was referred the bill (H. R. 253) for the relief of Thomas Hillhouse, assistant treasurer of the United States in New York City, report:

That there is a deficit in the internal-revenue stamp-account of Thomas Hillhouse, assistant treasurer of the United States in New York City, amounting to one hundred and eighty-five thousand dollars; that by the memorial of Mr. Hillhouse the report of Mr. Leipold, an official in the Treasury Department, the report of the committee of the House of Representatives, letters of Mr. Boutwell and Mr. Richardson, Secretaries of the Treasury, and other papers submitted to this committee, they are entirely satisfied that Mr. Hillhouse had no knowledge of or connection, personally, with the fraud which was the cause of the said deficit, and that the same, so far as any official of the United States is concerned, was caused by the defalcation and dishonesty of James I. Johnson, a clerk in the office of the assistant treasurer in New York, who it appears was enabled, by reason of the defective system of keeping accounts in the office of the assistant treasurer, to obtain sole control of the entire business of the sale of internal-revenue stamps amounting to millions of dollars per annum, and have in his own hands the only accounts of the receipts of stamps from the Treasury Department at Washington, and the remittances in payment of them.

His peculations appear to have commenced in October or November, 1871, and continued until about August, 17, 1872, during which time he managed to abstract the sum of \$185,131.72, and his fraud remained undetected until his absence created suspicion, and he had ample time to escape from the country to some of the West India Islands, where he is supposed to be beyond the reach of law or the extradition power of treaty.

Johnson was the direct subordinate of Mr. Hillhouse, who is legally responsible for his default, and your committee have felt great hesitancy in reporting a bill which shall entirely relieve Mr. Hillhouse of this legal responsibility, the existence of which they are unable to doubt.

It is undoubtedly a very hard case upon Mr. Hillhouse, and also hard upon the Treasury and people of the United States whose agent he was.

The precedents which have been already set, of granting relief by

Congress in cases of defalcation by subordinates, where no taint of fraud or suspicion of wrong rests upon the superior officer who is legally liable, would seem to warrant the passage of the bill now before the Senate, but it is clear that the *principle* of such measures is very questionable, as being opposed to that public policy which should always insist that the execution of high public duties connected with important pecuniary trusts should be rigidly coupled with the strict personal responsibility of the official in charge.

To deny or ignore this would place the entire community subject to the negligence and indifference of every Government official, who would run to Congress for relief on every occasion when the guilt of his subordinates and his own carelessness had resulted in public loss.

Johnson, the defaulter, was in office in October, 1866, long before Mr. Hillhouse became assistant treasurer; he was a clerk with a salary of but \$1,800 a year, and had not power to accomplish the frauds in question until, by a reduction of the clerical force of the division in which he was employed, all the accounts relating to the receipt and disposition of internal-revenue stamps became committed to his *sole* hand, and he appears to have been thus allowed to have sole management and control of Government funds averaging upwards of \$370,000 per month, without having any second or third official to act as a check upon his administration, and he had given no bond or security for the faithful performance of his duties.

The very natural result of coupling such large pecuniary responsibility with utterly inadequate compensation, and the withdrawal of those supervisory checks which common prudence and a sound economy dictate, presently followed, and Johnson, with the sole control and unchecked management of vast funds, was soon drawn into the vortex of Wall street gambling and speculation, where the \$185,000 disappeared.

Mr. Hillhouse has not the authority to appoint the additional clerks who were manifestly necessary to prevent *all* the accounts of the receipt and disposal of internal-revenue stamps from falling into the single hand of Johnson, but it was his duty to have reported to the Secretary of the Treasury the condition of his office, and to have demanded the proper increase of his clerical force.

We do not hold Mr. Hillhouse entirely answerable for the defects of a system which he did not create, and under which such frauds become possible, but we consider it high time that all excuses and pleas in mitigation should be rendered unreasonable by the institution of rules in the shape of legislation or Treasury regulation which will prevent the sole custody of revenue stamps or public money in the hands of any individual the execution of whose duties is not checked by other and independent officials, or is not secured by the giving of bond with proper security, and a resolution tending to secure these ends has been authorized to be introduced by this committee.

The fact that Mr. Hillhouse did not desire the bureau for the sale of internal-revenue stamps to be attached to his office, and did not in fact receive any remuneration for the increased duty and responsibility it entailed, do not form, in the opinion of this committee, any additional reason for his exoneration from liability. The duties of the office and its compensation are both fixed by public law, and it must be undertaken as a whole or the office relinquished.

Your committee report back the House bill without amendment, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 281.]

The Committee on Public Lands, to whom was referred the bill (S. 281) ceding to the several States within whose limits they respectively lie, the beds of unsurveyed lakes and other bodies of water, submit the following report:

The committee have amended the bill so that the cessions to the State shall embrace the beds of all lakes, ponds, and bayous of water not navigable, which have not been included in the surveys of the public lands and reservations by reason of their being covered by water, and where all of the contiguous surveyed lands have been granted, sold, or taken under the pre-emption or homestead laws. They have also amended the title so as to conform to the amended text of the bill.

The reasons in support of this measure are as follows:

1. The bill does not interfere with any body of water situate in the public-land States which is a public highway by reason of its navigability.

2. Nor does it interfere with such shallow lakes or other bodies of water as are in the interior of sections and not meandered, but which are treated and disposed of as parts of the sections.

3. But, on the contrary, it relates only to such bodies of water as have been meandered, and where the contiguous surveyed lands have all been disposed of and nothing is left but the beds covered by water, which have not been and are not capable of being surveyed and disposed of as part of the public domain. As to these, the committee regard the title as a barren and unproductive one, which the United States have no interest in retaining.

Congress has made no provision by law for draining these bodies of water. It has no motive for doing so. The lands reclaimed would not justify the expense.

Nor has Congress passed any law known to the committee extending any police authority over those waters. They remain common property for all such as choose to take fish or ice therefrom, or to utilize the water in any form, or the sand or soil under the water.

When the waters have receded from the original line at the time of the surveys, the rim laid bare has generally been taken possession of by the owners of contiguous lands and reduced to possession under what is claimed as riparian rights.

In some instances the States have asserted jurisdiction over the waters by enacting laws for the protection of fish, regulating the seasons and manner in which they may be taken.

Where these lakes and ponds are situated in the neighborhood of considerable towns or cities or upon lines of railway reaching them, the franchise of taking ice therefrom has become a valuable one. But neither the State nor the General Government has established any regulation upon the subject, and every one engaged in the business acts upon his own motion, and collisions are sometimes the consequence or are likely to happen. Of course no revenue is derived either to the State or nation.

State or county pride would take measures to make these lakes attractive places of resort for recreation, but for the fact that they are regarded as the property of the United States. Even as they are, old people and young, during the warm season, resort to them in great numbers with their basket-dinners and find pleasant relief from the monotony of toil. There is no pleasanter sight than these little pic-nic parties camped upon the margin of a bright little lake, making their first experiments in canoe navigation. Simple enough is the pleasure, but it is a healthful and moral one refreshing to the mind and body.

Now it is apparent, that should these small bodies of water ever become dry land by evaporation or other natural process, it will be at remote periods when the offices of the surveyors-general have been closed, and the survey and sale of the beds will not be justified by the returns of the sale of the lands.

Finally, the Commissioner of the General Land-Office, in a letter to the Secretary of the Interior, dated January 27, 1873, (Ex. Doc. No. 31,) expresses the opinion that it would be good policy to grant them to the respective States in which they are situated, and he furnishes the following reasons:

1. Most of them, if drained at all, will have to be drained by and at the expense of the State, as the General Government makes no provision for drainage in such cases.
2. If they become dry by natural process, it is usually long after the offices of the surveyors-general have been closed, and the duty of supervising the surveys devolves upon this office, which is remote from the field of operations, and therefore unable to supervise the letting of contracts and the execution of the work with that care that is necessary.
3. If the Government retains control over these lakes until they have been drained or become dry by evaporation or other natural process, the survey and sale of the same will be prolonged indefinitely, and their survey and sale in small quantities from time to time will not be profitable.

For these reasons the committee recommend the passage of the bill as amended.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 548.]

The Committee on Pensions, to whom was referred the petition of Christiana Bailey, of Mason County, West Virginia, praying for a pension, have considered the same and submit the following report :

Petitioner is the widow of David Bailey, late a private in Company B, Thirteenth Regiment West Virginia Infantry Volunteers, who entered the service on the 5th day of August, 1862, and died, while on furlough, 28th May, 1863.

It appears from the evidence on file in the Pension-Office that petitioner's husband, being sick and in the regimental hospital at Charlestown, W. Va., was furloughed to go to his home, near the town of Cologne, and was placed under the care of Duncan C. Forbes, of the same regiment; that he (David Bailey) went to the town of Cologne on the 28th day of May, 1863, where a general election was being held, and during the day was drawn into a dispute with one William Shields, a rebel-sympathizer, on political topics, when blows passed between them; that later in the day, when the said Bailey was alone on his return home, he was set upon by the said Shields and two other men and so severely beaten that he only survived a few moments.

Petitioner applied for a pension under the act of 14th July, 1862, but her claim was rejected on the 24th August, 1864, because it was shown by the testimony filed that her husband was at the polls without authority, and in violation of the orders of the person in whose charge he had been placed, when he engaged in a dispute on account of which he was attacked and beaten so severely as to cause his death.

Duncan C. Forbes testifies that he was charged to look after him (David Bailey) and others by Dr. Shaw, surgeon in charge of the hospital at Charlestown; that he did so, and reported him (Bailey) as unfit for duty; that the day previous to that on which he was killed, witness ascertained that Bailey was suffering from inflammation of the brain and advised him not to join his regiment, (which he was anxious to do,) but to remain about home and keep quiet.

The majority of the committee are of opinion that, upon the state of facts here given, the widow of the soldier ought to be pensioned. They lay great stress upon the fact that her husband was suffering at the time from inflammation of the brain, and ought not to be held, for that

reason, to the strictest accountability for disregarding the advice to stay away from the polls. While there his feelings as a loyal man and soldier were grossly insulted by Shields; the cause he was serving was denounced and the vilest epithets heaped upon him as a soldier in that cause. He bore this as long as it was possible for flesh and blood to do it, and then struck down the rebel. For this he was waylaid and murdered. We commend him for his patriotism, and think he deserves to be enrolled as one of the country's martyrs as much as if he had fallen in battle. The committee therefore report the accompanying bill and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1874.—Ordered to be printed.

Mr. CLAYTON submitted the following

R E P O R T :

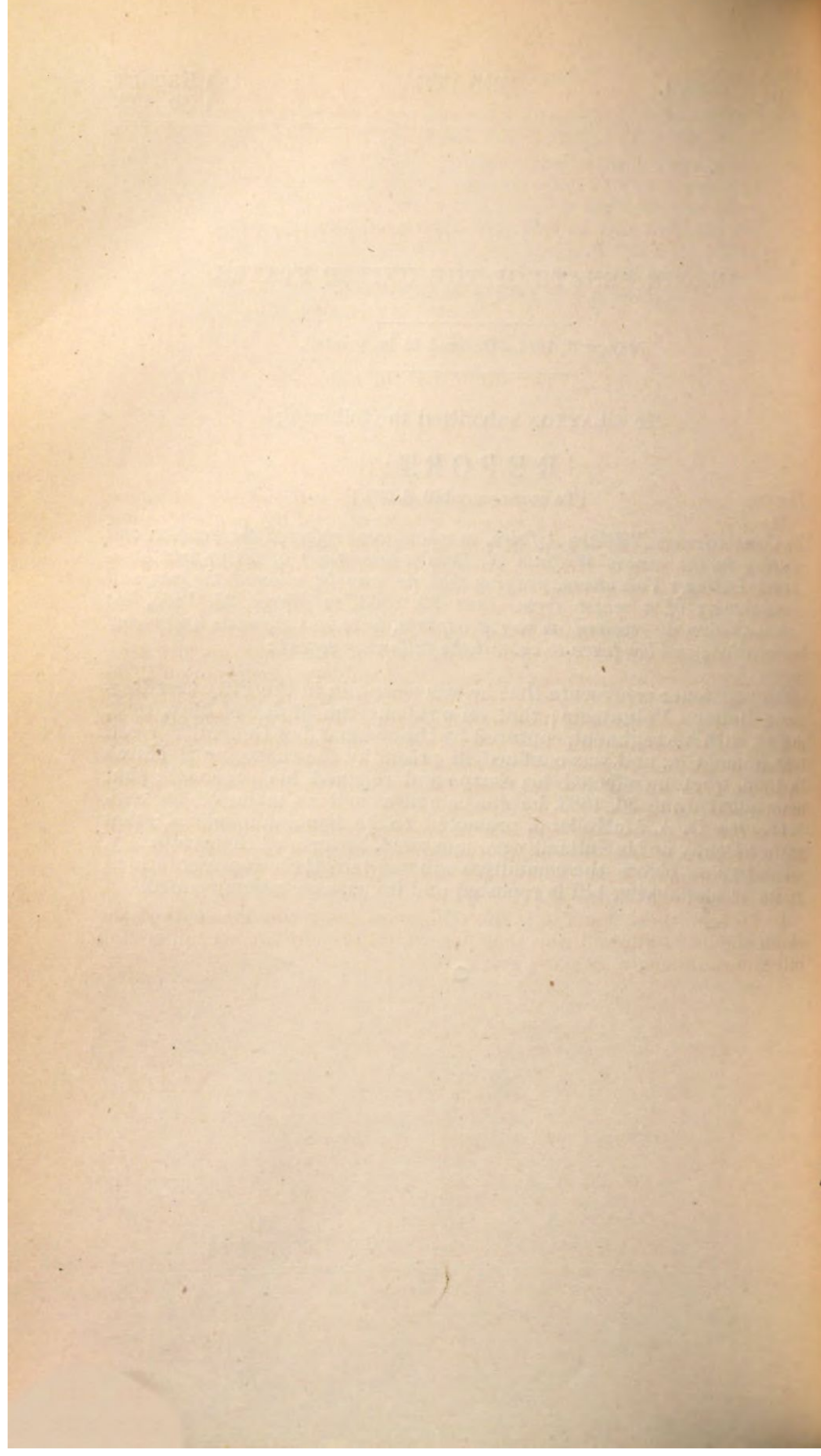
[To accompany bill S. 560.]

The Committee on Military Affairs, to whom were referred the petition and papers in the case of William N. Denny, late major of Fifty-first Regiment Indiana Volunteers, praying that he may be allowed the pay and emoluments of a major from June 30, 1863, to March 25, 1865, less amount already received as pay of captain, have had the same under consideration, and beg leave to submit the following report :

The petitioner represents that he was a captain in the Fifty-first Regiment Indiana Volunteers; that on or about the 3d day of May, 1863, he was, with his regiment, captured by the command of General Forrest, near Rome, Ga., and was confined in prison by the enemy until March 25, 1865, when he effected his escape and rejoined his regiment; that on or about June 30, 1863, he was commissioned as major of his regiment, vice D. A. McHolland, promoted to be lieutenant-colonel; that neither Denny or McHolland were mustered, because of their captivity.

The papers before the committee substantiate these representations.

The accompanying bill is reported and its passage recommended.



IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1874.—Ordered to be printed.

Mr. CLAYTON submitted the following

R E P O R T :

[To accompany bill S. 561.]

The Committee on Military Affairs, to whom was referred the petition of Charles H. Moseley, asking that he may be allowed the pay and allowances of a second lieutenant, less the amount already received as pay of a private soldier, have had the same under consideration, and beg leave to submit the following report :

It is shown by the papers before the committee that Charles H. Moseley was commissioned as second lieutenant of the Forty-seventh Kentucky Mounted Infantry by Thomas E. Bramlette, governor of Kentucky, on September 9, 1864; that said Moseley was not mustered on account of the failure of another officer (one McCracken) to report for muster as first lieutenant, he having been promoted from a second lieutenant upon the same date that Mosely was commissioned as second lieutenant, to fill the vacancy caused by the promotion of the above-named McCracken.

It is further shown that Lieutenant Moseley entered upon duty immediately upon receipt of his commission, and continued to fill the office of second lieutenant until he was honorably discharged from the service at the close of the war.

In view of these facts it is the opinion of your committee that the claim should be allowed, and they accordingly report the accompanying bill and recommend its passage.

THE HISTORY OF THE UNITED STATES

THE HISTORY OF THE UNITED STATES

REPORT

(The Commission on the History of the United States)

The Commission on the History of the United States was organized in 1961 to study the history of the United States and to report on the results of its study. The Commission was composed of members from various fields of study, including history, literature, and social sciences. The Commission's report, "The History of the United States," was published in 1964. The report is a comprehensive study of the history of the United States, covering the period from the early years of the nation to the present. The report is divided into three main parts: the first part deals with the early years of the nation, the second part deals with the middle years, and the third part deals with the present. The report is a valuable resource for anyone interested in the history of the United States.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

R E P O R T :

The Committee on Claims, touching the petition of Mary C. Holmes, asking compensation for fifty bales of cotton, &c., make this report :

There is nothing before the committee but a petition, and that not verified. It sets forth that petitioner owned fifty bales of cotton, stored in Perry County, Alabama; that, on or about the 25th of October, 1865, it was taken away by a detachment of United States troops; that she never received any remuneration therefor; that, being unfamiliar with law and public matters, she was not aware of the proper tribunals before which to make application for compensation, until very recently, and after the time had expired for making the same. She also says that she has been prevented by protracted illness from giving the matter attention; and, therefore, she asks compensation, &c.

This petition is too barren of every essential element (and in what respects we certainly need not point out) to entitle petitioner to any relief. Add to this, that it is neither sworn to nor attempted to be supported by evidence, and our duty would seem to be clear to recommend, as we do, that the committee be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1874.—Ordered to be printed

Mr. MITCHELL submitted the following

REPORT:

[To accompany bill S. 563.]

The Committee on Claims, to whom was referred the claim of Messrs. Jordan and McPike, having considered the same, herewith submit the following report:

This is a claim which was favorably considered by the Senate Committee on Claims during the third session of the Forty-first Congress. Its report, No. 274, submitted through the Hon. Mr. Willey, on the 21st day of December, 1870, is so clear a statement of the facts in this case and of the law applicable thereto that your committee have incorporated the same in full in this report.

[Senate report No. 274, Forty-first Congress, third session.]

DECEMBER 21, 1870.—Ordered to be printed.

Mr. WILLEY made the following report:

The Committee on Claims, to whom was referred Senate bill No. 59, for the relief of Jordan & McPike, having considered the same, beg leave to submit the following report:

In the spring of 1860, great alarm was excited among the inhabitants of Virginia City and its vicinity, then in Utah Territory, by the depredations of the Pi-Ute Indians. An irregular force of about one hundred persons, consisting of many of the best citizens, was organized, armed with such weapons as they could procure, and went out from Virginia City to chastise the Indians. The expedition was unfortunate, falling into ambush, where some sixty of said citizens were killed by the Indians and the others dispersed. This greatly increased the alarm, and there was good reason to fear that the settlements around Virginia City, if not the town itself, would be attacked by the Indians in large force. There were no troops or arms or government nearer than Salt Lake, five or six hundred miles distant. Under these circumstances the governor of California and the United States officer in command of the Department of the Pacific sent forward to Virginia City arms and ammunition, in charge of proper officers. Two or three hundred volunteers also came along with the United States troops. The citizens of Virginia City and vicinity, together with the United States troops and volunteers from California, organized a regiment, and selected Col. Jack Hays, who happened to be there at the time, to take command thereof. Thus organized and thus commanded, this improvised regiment marched against the Indians, and, after a hard-fought battle, whipped them severely, and secured peace and safety.

It became necessary to organize a provisional quartermaster and commissary department to accompany this expedition. Accordingly, one Richard N. Snowden was appointed commissary, and as such entered into a contract with said Jordan & McPike to furnish certain supplies. Said contract is hereunto appended and is marked A. In conformity with this contract the said Jordan & McPike did furnish supplies amounting, in the aggregate, to the sum of \$19,473.50. Their accounts therefor are hereunto appended, marked B, C, D, E.

The evidence shows that this expedition against the Indians was necessary for the preservation of the lives and property of the people of Virginia City and vicinity, and that its organization and success perhaps preserved the people there from destruction. The Government had no troops there; the danger was instant; there were no means of preventing destruction excepting those adopted. The people themselves did what the Government should, perhaps, have been prepared to do. Under these circumstances the committee think there is a moral and equitable obligation resting on the Government to pay the necessary expenses of the expedition.

The prices charged for the supplies seem to be high, but the testimony is all to the effect that, under the adverse circumstances of the case, they could not have been furnished for less. And considering that it is now ten years since the supplies were furnished, the committee recommend the passage of the bill. They invite attention to the affidavit of Colonel Hays, hereunto appended, marked F.

A.

This agreement, made this 22d day of May, in the year 1860, at Virginia City, Utah Territory, between John Jordan and John M. McPike, doing business under the firm name of Jordan & McPike, in said Territory, parties of the first part, and Richard N. Snowden, commissary of the Utah Volunteers, under command of Col. John C. Hays, for an expedition against the Pi-Ute Indians, in said Territory, party of the second part, witnesseth: That the said parties of the first part hereby agree to furnish fresh beef for the use of said expedition, at 30 cents per pound, and to drive the necessary number of beef-cattle with said command during such expedition; and the said party of the second part, as commissary as aforesaid, in consideration of the said agreement on the part of the said parties of the first part, hereby agrees to furnish the said parties of the first part on demand with proper certificates of the amounts of beef so furnished as aforesaid, and the just value and price thereof at the times and places where the same shall be delivered, to enable the said parties of the first part to present in proper form and with due vouchers their claim therefor against the Government of the United States; and further agrees that said cattle so driven with said command shall be guarded on the road and in camp by guards from said volunteer force.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

JORDAN & MCPIKE, [SEAL.]
 RICH'D N. SNOWDEN, [SEAL.]
Utah Volunteers.

Sealed and delivered in the presence of—

H. TALER BOAMEN.

Approved May 22, 1860.

JOHN C. HAYS,
Colonel Commanding.

B.

THE UNITED STATES OF AMERICA

To JOHN JORDAN AND JOHN M. MCPIKE,

DR.

To supplies furnished the expedition under command of Colonel Hays against the Pi-Ute Indians, in Utah Territory, as follows:

33,000 pounds of beef, (furnished at Camp Hays, Carson River; camp at Big Flat, Carson River; camp at Williams's ranch, at Cattle Crossing of Truckee River, at 30 cents per pound..... \$9,900

I hereby certify on honor that the above amount of provisions was actually furnished the expedition under command of Colonel Hays against the Pi-Ute Indians, in Utah Territory; that the price charged in the within bill is just and reasonable, and that the provisions charged for therein were necessary for the public service.

RICH'D N. SNOWDEN,
Commissary Utah Volunteers.

SILVER CITY, June 11, 1860.

C.

THE UNITED STATES OF AMERICA

To JOHN JORDAN AND JOHN M. MCPIKE,
(Doing business under the firm-name of Jordan & McPike,)

DR.

To supplies furnished the expedition under command of Colonel Hays against the Pi-Ute Indians, in the Territory of Utah, as follows:

To 100 pounds crackers, at 80 cents.....	\$80 00
To 120 pounds loaf-sugar, at 60 cents.....	72 00
To 10 gallons brandy, (medicinal,) at \$10	100 00
To 1 dozen camp-kettles.....	30 00
To 1 dozen frying-pans.....	20 00
To 1 dozen coffee-pots.....	20 00
To 1 set butchers' tools.....	30 00

At Williams's ranch, Carson River.

To 350 pounds coffee, at 65 cents.....	227 50
To 2,500 pounds flour, at 70 cents.....	1,750 00
To 305 pounds bacon, at 80 cents.....	244 00
To 200 pounds salt, at 50 cents.....	100 00
To use of one wagon and two horses for transportation, 21 days, at \$20.....	420 00
	3,093 50

I hereby certify on honor that the amounts of provisions and services in the within bill set forth were actually furnished the expedition under the command of Colonel Hays against the Pi-Ute Indians, in the Territory of Utah, and that the same were necessary for the public service, and that the prices charged therefor are just and reasonable.

RICH'D N. SNOWDEN,
Commissary Utah Volunteers.

SILVER CITY, June 11, 1860.

D.

THE UNITED STATES OF AMERICA

To JOHN JORDON AND JOHN M. MCPIKE,
(Doing business under the firm and name of Jordon & McPike,)

DR.

To supplies furnished the expedition under the command of Colonel Hays against the Pi-Ute Indians, in Utah Territory, as follows:

16,800 pounds of fresh beef, furnished at camp at Big Meadows of Truckee; camp at Pyramid Lake, and relieving at Lamee crossing of Truckee, and at camp at Williams's ranch.....	\$5,040
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I hereby certify on honor that the above amount of provisions was actually furnished by Jordon & McPike to the expedition under command of Colonel Hays against the Pi-Ute Indians, in Utah Territory; that the prices charged in the within bill are just and reasonable, and that said provisions were actually necessary for the public service.

RICH'D N. SNOWDEN,
Commissary Utah Volunteers.

SILVER CITY, June 11, 1860.

E.

THE UNITED STATES OF AMERICA

To JOHN JORDAN AND JOHN M. MCPIKE,
(Doing business under the firm name of Jordan & McPike,)

DR.

To supplies furnished the expedition under command of Colonel Hays against the Pi-Ute Indians in Utah Territory, as follows:

4,800 pounds of fresh beef, furnished at the camp near Virginia City, at 30 cents per pound.....	\$1,440
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I hereby certify on honor that the above amount of provisions was actually furnished the expedition under command of Colonel Hays against the Pi-Ute Indians, in Utah

Territory; that the price above charged is reasonable and just, and that said provisions were necessary for the public service.

RICH'D N. SNOWDEN,
Commissary Utah Volunteers.

SILVER CITY, *June 11, 1860.*

F.

I was temporarily in the Territory of Utah, on private business, when the Indian outbreak spoken of in the annexed papers occurred. The outbreak was believed by the inhabitants to be of a formidable character, the danger great and imminent. I considered it my duty, at the unanimously expressed desire of the volunteers, to accept the command of the expedition, and did so with great reluctance and not a little personal sacrifice. The campaign was conducted to a successful termination with dispatch, and with as much economy as possible in that *then* almost inaccessible country. The volunteers neither asked nor received any pay. I believe the annexed contract, entered into with Jordan & McPike, was a reasonable and proper one, and was faithfully executed on their part.

I recognize the annexed contract as the one at that time made with Jordan & McPike, and approved by myself as the commanding officer. I informed them at the time the contract was made that I believed there would be no difficulty in their receiving their pay from the Government. I think the claim a just one, and believe it should be paid.

JOHN C. HAYS.

Sworn and subscribed before me this 3d day of May, 1870.

N. CALLAN,
Notary Public.

Your committee, however, find, as a difference worthy of attention, from the written contract between Richard N. Snowden and the claimants, (Jordan & McPike,) that beef was the only article furnished in pursuance of the terms of the written contract; and that all other articles were furnished in pursuance of a verbal understanding.

It appears that the claimants furnished 54,600 pounds of beef, at a contract-price of 30 cents a pound, amounting to \$16,380. Also, though not called for by the written contract, that they supplied the expedition with salt, bacon, flour, and coffee, (the item for flour being the chief one, to-wit, \$1,750,) besides other articles of light value; such commodities amounted to \$3,093.50. Although these latter articles were high in price, it is found that the amount claimed for them is reasonable, considering the condition of the country at that time and the circumstances under which they were supplied.

From the affidavit of John M. McPike, filed with the papers in the case, it appears that his partner, John Jordan, named as one of the claimants herein, deceased in the year 1861; but that prior to his demise he assigned to the deponent, McPike, now the sole claimant herein, his interest in this claim, which interest is still the property of the said John M. McPike. This affidavit is corroborated by the written receipt and assignment of John Jordan, dated 13th November, 1860, on file in the case.

Your committee, notwithstanding the difference cited in their present report from the report of Mr. Willey, fully concur in the conclusions of law, and also as to the justice of the amount of the petitioner's claim, as heretofore considered and favorably reported upon to the Senate. We therefore report back the accompanying bill as a substitute for Senate bill No. 354, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1874.—Ordered to be printed.

Mr. MORRILL, of Maine, submitted the following

R E P O R T :

The proposition submitted by the resolution of the Senate is whether an obligation rests upon the Government of the United States to re-imburse States and Territories, and the citizens thereof, for expenses and damages sustained by reason of incursions of hostile Indians.

The committee are not able to perceive upon what grounds such obligation can be supposed to arise.

Most certainly such obligation is not assumed when the States enter the Union. Nor is it believed that it necessarily results from their relation to it when so admitted.

Doubtless an obligation to re-imburse expenses incurred in resisting an invasion of the public enemy might arise if duly called upon under circumstances justifying such call for aid. But it is sufficient to say that no such question arises upon the proposition submitted, viz: An incursion of hostile Indians.

It is scarcely to be presumed that the public safety would become so largely involved by the incursion of marauding parties of Indians as to render it necessary for the State to appeal to the United States Government for aid to defend its soil, or the property or person of its citizens. And if not, certainly no such obligation as is suggested would be imposed.

The case cannot be otherwise in regard to the Territories, unless the expenses have been incurred by authority of the United States. The duty of protecting its citizens rests primarily with the States, and it is not perceived that under circumstances such as are supposed that duty could be devolved upon the United States.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill H. R. 1575.]

The Committee on Claims, to whom was referred the bill (H. R. 1575) for the relief of Richard H. Swift, submit the following report :

The bill directs the payment of \$4,080.24 to Swift, for the informer's share in the case of the United States against Jonathan M. Dair and certain property, wherein judgment of condemnation was rendered.

The facts are briefly as follows :

Dair had a distillery at Harrison, Ind. Swift was the assessor for the fourth internal-revenue district in that State, in which the distillery was situated, and believing that whisky was being fraudulently manufactured and removed without paying the tax thereon, he gave information to the collector and district attorney for the purpose of having suit instituted, the whisky seized and condemned, and was vigilant and energetic in the conduct of the proceedings resulting in condemnation. A libel was filed in the district court of Indiana against two hundred and thirteen barrels of high-wines and Jonathan M. Dair, the distiller, and a decree of forfeiture was rendered July 23, 1868.

On the 3d of August following there was a decree of distribution, the distributive share of the United States being found to be \$32,960.33. This sum was paid over to the collector of the fifth district in that State on the 15th of August, 1868. This left in the clerk's hands \$4,080.24, which, by order of court, was to be retained in the registry of the court to abide the claims of sundry informers. They were three in number—Swift, Lantenschlager, and Pursell. On the final hearing the court dismissed all the claims of the informers, and directed the funds in court so retained to be paid to the Government. This was done on the 16th of March, 1869.

The judge who made the decree and the district attorney are both dead. The record is silent as to the grounds on which the decision against the claimants for the informer's share was made. Parol proof supplies the defect. The claims of two were dismissed, because they were not the informers entitled by priority to the informer's share. Swift was found to be the informer, and his claim to the informer's share would have been recognized but for the fact that he was the assessor of the district at the time, the judge holding that his official position disqualified him from receiving a share in the proceeds of the forfeited property. This is well shown by the testimony of Jonathan W. Gordon, an attorney in the case, and of Mr. Bell, the deputy dis-

strict attorney, who represented the United States on the hearing. There is no reason to doubt, from the testimony, that Swift would have been recognized as entitled to the informer's share, but for the fact of his having been the assessor of the district at the time the information was given, and during the subsequent proceedings resulting in the judgment of forfeiture. Unfortunately no written opinion was filed by the judge, nor was the proper exception taken to allow a review of the question by the Supreme Court of the United States, and the period for an appeal has now elapsed.

That the judge was wrong in the construction of the act of Congress on the subject, is shown by the opinion of the Attorney-General, the letter of the Secretary of the Treasury, and the decisions of most of the district courts of the United States. While Mr. Boutwell was Secretary of the Treasury he addressed a letter to the chairman of the Committee on Claims of the House of Representatives, in which he uses this language :

If, however, the committee are satisfied that Mr. Swift's claim was disallowed simply because he was an internal-revenue officer, it may be proper to observe that I am informed and believe that in nearly all the judicial districts of the United States, internal-revenue officers have been awarded informers' shares without objection, and that this Department has taken the same course, following an elaborate opinion of the Attorney-General.

The opinion referred to will be found in the 13th volume of Opinions of Attorneys-General, page 228.

After the act amendatory of the internal-revenue law went into effect on August 1, 1866, the Secretary of the Treasury issued circular instructions establishing a schedule of informers' shares. According to the schedule the amount coming to Swift is the sum named in the bill.

The case is much more fully presented in the report of the House committee No. 45, to which reference is hereby made.

Under the rulings of the courts and the opinions of the Attorney-General and Secretary of the Treasury, but one point seems open to inquiry, and that is whether Swift has earned the informers' share. We think the evidence establishes his claim, and, therefore, report the bill back to the Senate, without amendment, and recommend its favorable consideration.

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IN THE SENATE OF THE UNITED STATES.

MARCH 5, 1874.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT:

[To accompany bill S. 375.]

The Committee on Claims, to whom was referred the petition of the Agricultural and Mechanical Association of Lexington, Ky., report:

That it appears from the proofs in the case that the association was in the possession of a tract of land containing some 52 acres, which was used for the purpose of a fair-ground. That about one-third of the tract was covered with fine forest trees. The grounds were inclosed with a close plank fence, 8 feet high, with locust posts. The building on the grounds consisted of an amphitheater, with a capacity for seating 8,000 persons, the space under the seats being fitted up with booths, &c., a superintendent's cottage, a floral hall, two stories high, and a mechanical hall, used for machinery; about 250 stables or sheds, used for stabling stock, six houses in front of the stables, for grooms and storing forage, and the springs, benches, water-tanks, &c., necessary for the convenience of a large crowd. This property was taken possession of by the United States troops, under the command of Col. Grigsby, on the 15th day of September, 1861, and occupied by them continuously until January, 1866. At the time it was so taken possession of the grounds and buildings were in good order, having been fixed up preparatory to the holding of the State fair the year previous. During the occupancy of the United States troops all the buildings on the ground were destroyed, except the walls and roof of the floral-hall and the superintendent's cottage, which latter, however, was left in a damaged condition. The fencing was used for fuel, and of the forest trees not over a dozen were left in a sound condition. The burning and killing of the trees were caused by fires, being built against them. The destruction of the buildings on the grounds took place while the grounds were in the possession of the 24th Regiment, Kentucky Volunteer Infantry, (United States forces,) commanded by Col. L. B. Grigsby.

A report was submitted in this case to the 3d session of the 42d Congress, by Mr. Machen, (Report No. 312,) and that report is hereby made a part of this report.

[Senate report No. 312, 42d Congress, 3d session.]

JANUARY 20 1873.—Ordered to be printed.

Mr. MACHEN submitted the following report, to accompany bill S. 1402:

The Committee on Claims, to whom this case was referred, report that it appears, from the proofs in the case, that, on the 15th of September, 1861, the fair-grounds of the Agricultural and Mechanical Association of Lexington, Ky., were taken possession of by

2 AGRICULTURAL AND MECHANICAL ASSOCIATION OF LEXINGTON.

the United States troops, then under Colonel Grigsby, and his troops encamped thereon; that said fair-grounds were handsomely and expensively improved, having a large and fine amphitheater and all the out-buildings usual and needful for such purposes, and large lawns with shade-trees and seats; all erected and maintained by said association and for the advantage of agriculture and mechanics; that while used by said troops, and in December, 1861, the buildings and improvements were nearly all destroyed by fire, the shade-trees destroyed by various means, and a general destruction taking place of fencing around the premises. Possession was continued of the premises after the fire, and until the month of January, 1866.

On the 22d of February, 1864, General Schofield, in command of the Department of Ohio, which embraced that part of Kentucky, ordered a board of loyal citizens of Kentucky to estimate the damages done to the fair-grounds by reason of the occupancy of the United States troops as a camping-ground since September, 1861. Said commission, duly appointed, made the investigation, and reported to Captain P. W. Anderson, assistant adjutant-general, on the 29th of February, in which they estimate the cost of repairing the property injured, and making it as good as it was before occupied by the troops, at the sum of \$34,025, but state that, taking into consideration the greater value of the new buildings over those destroyed, \$25,000 would cover the damages. The report was referred by Major-General Schofield to Captain E. Gray, acting assistant inspector-general for the Department of Ohio, for examination, and, on the 2d March, 1864, he indorsed thereon, "Examined, and the within account considered proper and reasonable, and respectfully recommended to be paid."

On the 23d day of August, 1866, the claim was presented to the Quartermaster-General for settlement, and he referred the papers to Captain Restinaux, assistant quartermaster, at Louisville, Ky., for a special report, who, after having made a personal examination of the premises, made a report to the Quartermaster-General, recommending the payment of about \$29,900. The Quartermaster-General then referred the claim to the special war-claims commission, of which Major-General E. R. S. Canby was president, and on the 1st May, 1867, that commission published notice that the claim "was allowed," but their report not having been written out and signed prior to the transfer of General Canby to the command of the second military district, the claim was not paid.

In the summer of 1868 the claim was again submitted to the board of claims, General James A. Hardie then being president of the board, and upon the recommendation of the board the papers were referred to Inspector-General D. B. Sackett, who also made a personal inspection of the premises, and, after taking some additional testimony, submitted his report on the 30th September, 1868, in which he recommends substantially the same as recommended by the board appointed by General Schofield, and says, "that the estimates are fair and reasonable, and not a dollar too high."

The board of claims concurred in these recommendations, except as to the feasibility of making payment out of the regular appropriations, and in their opinion there was no appropriation applicable to the payment, and they recommend the claim to the special and favorable consideration of Congress, which was approved by the Secretary of War on the 20th November, 1868.

The committee omitted in its proper place to state that, on the 24th March, 1865, a board of survey was ordered by Colonel S. W. Price, then in command of the post at Lexington, and on the 27th March the commission met, and after examining the fair-grounds report the accruing damages, after the former surveys had been made, to be the sum of "\$3,000."

There is an additional claim for rent, from 15th September, 1861, until the 1st January, 1866, at the rate of 10 per cent. per annum on the assessed value of the property, as made at the time it was taken possession of by the troops of the United States, which claim amounts to the sum of \$11,158.33, to be credited by \$3,312.08, as allowed by the Quartermaster-General upon that item; but the committee are of the opinion that nothing more should be allowed on that claim.

The committee believe the claim for \$25,000, as found to be owing on the first assessment by order of General Schofield, constituted a just and equitable debt that ought to be paid, and therefore recommend the passage of the accompanying bill, for the sum of \$25,000.

IN THE SENATE OF THE UNITED STATES.

MARCH 5, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 566.]

The Committee on Pensions, to whom was referred the petition of Lucinda Schrum, widow of Jacob R. Schrum, for pension, have had the same under consideration and beg leave to report:

In this case the testimony sufficiently establishes the following facts: That petitioner is the widow of Jacob R. Schrum; that her two children were born, respectively, Vinet T., 12th of September, 1856, and Malinda Schrum, 13th of May, 1858. All reside in Missouri, and are poor.

That Jacob R. Schrum volunteered and served as a private soldier in Company B of the enrolled Missouri militia for a considerable length of time; and afterward, on the 8th of August, 1864, enlisted in Company A, Forty-ninth Regiment Missouri Volunteers, as a private, and served as such until the 2d day of February, 1865, when, in the hospital-car going from Mexico to Saint Louis, Mo., under orders with his regiment to go south, he suddenly died at Saint Charles, Mo.

Early in 1865 the widow applied for a pension, proved all the facts as above stated. Her claim was rejected.

Again, September, 1872, she made a second application, which was again, in November, 1872, rejected. The rejection in both cases was founded on the remark in the company muster-roll of his (Schrum's) company, that the soldier had died of "delirium tremens." It was therefore held, upon the military record in his case, by the Pension Bureau, that Schrum did not die in the line of duty.

To overcome this record several affidavits were filed which positively contradict and explain the record, but were not held sufficient by the Pension Bureau to set it aside.

The affidavit of the captain of his company states that he enlisted Schrum, and that he was a healthy, sound, temperate, and sober man; that when he died he was not under the influence of liquor; that he had been sick for some time, and on the day the regiment moved Schrum was placed in the hospital-car with the other sick of the regiment, and after fifteen hours of close confinement in a hot car, overcome by exhaustion and heat, he suddenly died, on the way to Saint Louis, at Saint Charles, Mo., of apoplexy. This affidavit is clearly sustained by Captain Ball of Company E, who knew Schrum personally for several years; by the sergeant who was in charge of the hospital-car on the run from Mexico to Saint Louis; by the assistant surgeon of the regiment who was present at the death of Schrum, and made an examination of him; by the letter of Dr. O. Mong, the surgeon of the regiment; and by several sol-

diers, who write and certify that he was a temperate and sober man. The captain of his company testifies that he had command of the regiment on the march to Saint Louis at the time of the death of Schrum; and that the entry upon the muster-roll of the company that Schrum died of "delirium tremens" was made without his knowledge or direction, and was an error which arose from a camp rumor that Schrum had so died simply because he had died suddenly.

James H. Ogden, who was a private in Company H of said regiment until he was mustered out of the service, testifies that he was on the hospital-car from Mexico to Saint Louis as a nurse; that Schrum was not under the influence of liquor on the train nor at the time of his death; that he was very unwell, and complained of his sickness, and of the refusal of his officers to allow him to see his family before leaving to go south, as he did not believe he would live to see them again; that they were confined in a close hot car for fifteen hours; that he was under the charge of the assistant surgeon on the run to Saint Charles and had no liquor or stimulants of any kind on the way, nor up to the time of his death; that he kept raving about his family—his action being that of a crazy man; that some of the soldiers, who knew nothing about Schrum's condition, said, after his death, "he had snakes in his boots," meaning delirium tremens; but that Dr. Ruby, assistant surgeon at the time, denied that he died of delirium tremens, and pronounced it apoplexy. Additional and important evidence not before the Pension Bureau is submitted with the case before us. We are satisfied there is enough proven to raise a reasonable doubt of the correctness of the military record, and justify us in concluding that Schrum died of disease contracted in the service and in the line of duty. We therefore recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 5, 1874.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill S. 567.]

The Committee on Pensions, to whom was referred the petition of Mary E. Naylor, widow of Osborne Naylor, deceased, having had the same under consideration, report:

That the said Osborne Naylor was a private in Company C, Second Regiment Kansas State Militia, under command of Major-General Curtis, Department Missouri, and was captured at battle of Little Blue, Mo., October 22, 1864. He was detained as a prisoner for five days, during which time he was subjected to great hardship and exposure by long marches, bad weather and insufficient rations. He was paroled and returned to his home in Shawnee County, Kansas, November 3, 1864, in a condition of great exhaustion, and suffering with pneumonia, from the effects of which he died November 20, 1864. He left four minor children at the time of his death, and the committee herewith report a bill for the relief of Mary E. Naylor, with the recommendation that it pass.

IN THE SENATE OF THE UNITED STATES.

MARCH 6, 1874.—Ordered to be printed.

Mr. CHANDLER submitted the following

REPORT:

The Committee on Commerce, to whom was referred the memorial of Dr. William Trevitt, former United States consul at Valparaiso, Chili, asking payment of salary and clerk-hire, submit the following report :

That in July, 1857, Dr. William Trevitt entered upon the duties of the consulate at Valparaiso. That having incurred the displeasure of the Chilian government by an alleged participation in certain political disturbances that occurred there, his exequatur was withdrawn March 21, 1859, and thereupon Hon. William Bigler, United States minister to Chili, authorized the secretary of legation, G. W. Ryckman, to discharge the duties of consul.

This action was approved by the Department of State, and Mr. Ryckman was recognized as vice-consul of the United States at that port, and discharged the duties of the consulate from the 21st of March, 1859, to the 16th of April, 1860.

Dr. Trevitt remained in Valparaiso until the 19th of February, 1860, when he left there for Callao, Peru, having been appointed consul at the latter place.

In the mean time, after Dr. Trevitt's exequatur was withdrawn, and while he yet remained at Valparaiso, it appears that he established a hospital, in which sick and destitute seamen were cared for; and during the period between April 1 and December 31, 1859, Dr. Trevitt was paid by Mr. Ryckman, the vice-consul, the sum of \$8,419.50 for the relief of destitute American seamen.

Dr. Trevitt also claimed the payment of a salary as United States consul from the time his exequatur was withdrawn by the Chilian government until the time he left Valparaiso for Callao, amounting to \$2,744.91, of which sum he was paid \$1,591.67, and the amount was afterward re-charged to him by the Treasury Department, upon a decision that he should not properly be paid a salary as consul and for services as physician to sick seamen, covering substantially the same time.

The matter having been referred to Hon. J. S. Black, then Secretary of State, he decided (letter to the Fifth Auditor, March 2, 1861) as follows: "I have considered the claim of Dr. William Trevitt, late consul at Valparaiso. He claims his salary as consul, and besides that a bill for services as physician to sick seamen. He is not entitled to both. They are claimed by inconsistent rights, and in two characters, which are legally incompatible. I think he was not properly consul, and may, therefore, be paid his bill for medical services and expenses of keeping

up the hospital during the time Mr. Ryckman performed the duties of the consulate. But this can only be done on condition that he pays back or allows a deduction from his bill of an amount equal to what he received as salary during the time referred to."

Dr Trevitt's accounts for services rendered at Valparaiso were adjusted in accordance with the above-quoted decision.

In regard to the payment of clerk-hire, as there was no provision of law for such payment, it should properly be rejected in the opinion of your committee, and they ask to be discharged from the further consideration of the memorial above set forth.

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IN THE SENATE OF THE UNITED STATES.

MARCH 6, 1874.—Ordered to be printed.

[Mr. PRATT submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Elizabeth Howard, praying to be allowed a pension, beg leave to submit the following report :

The petitioner alleges she is the widow of Thomas H. Howard, who was a marine for over a quarter of a century, and also a private in Company K, Fifth Regiment United States Veteran Volunteers, for the period of one year during the war of the rebellion. She made application for a pension, but it was disallowed; and she refers Congress to the evidence she filed in the Pension-Office in support of her claim, and says that the reason of its disallowance (on June 23, 1873) was that the law regulating pensions to marines provides, that when the disease was contracted prior to 1861, and the mariner dies after his discharge from the service, the pension does not survive to his heirs. She admits her husband was in the receipt of a pension at the time of his death, which ceased on that event. She further says she is the mother of a daughter, ten years of age, who supports her by begging alms from charitable persons.

This is the substance of her petition, which is not sworn to, nor even subscribed by her, but was evidently prepared by an attorney.

The letter of the Commissioner of Pensions which accompanies the petition shows that her claim as widow was rejected because there was no law allowing pensions to the heirs of sailors who have died out of the service subsequent to March 4, 1861, of a disease contracted prior to that date.

The soldier's discharge is filed, which shows that he was enrolled on the 20th of March, 1865, in the company and regiment above stated, and discharged one year thereafter by reason of the expiration of his term of service; and on the discharge it is written that the soldier was paid in full.

James H. Mandeville, the petitioner's attorney, appears to have been appointed administrator of the estate of her husband on the 19th of August, 1873, in the supreme court of this District, and to have collected \$117.40, which was the twenty per-cent. money earned by Howard as a laborer in the navy-yard of this city. The purpose of this proof does not appear.

There is a mass of proof filed with the petition, which, however, relates to two subjects only. The first is, that while her husband was serving on the sloop-of-war Dale on the western coast of Africa, between the years 1857 and 1859, he was suffering from chronic diarrhea,

contracted while a marine off the coast of China ; that in consequence of his disease and consequent debility he was not required to do port duty on the Dale, but only light duty, such as cooking on the berth-deck ; further, that, in consequence of over twenty years' service, Howard was received into the naval asylum at Philadelphia for a period of three years, from which place he returned to Washington about 1862-'63. He then found employment in the navy-yard, where he continued to work until entering the Army, as above stated. When his term of enlistment expired, it is said he returned home, broken down with age and infirmities, the chronic diarrhea still clinging to him, and proving to be incurable. He continued to perform light work, such as watching vessels and the like, until July, 1872, when he died at the age of sixty-five.

It is proper to say that the witnesses who speak of Howard's disease are not medical men.

The second subject of the testimony is Mrs. Howard, the petitioner, and her needs. Without reviewing it at length, it may be said it tends strongly to prove that, while she had health and strength, she was an industrious, hard-working, economical woman, an honest and faithful wife, saving her husband's pay, and putting it, with her own earnings, into a humble little home, which she now owns ; and that she has been an invalid for many years, and is now bed-ridden and dependent on charity for support. Indeed, could poverty and a blameless life justify us, under any circumstances, in recommending a pension as an act of charity to be conferred upon a proper subject, we may freely say that this good woman has made out a strong case for relief. We may add that the evidence also shows her husband to have been a sober and honest man, and to have spent the best part of his life in the service of the United States in one capacity or other.

We infer from what is before us that Mr. Howard was enjoying a naval pension at the time of his death. It is against the policy of the law to perpetuate pensions. His disability, if such there was, was contracted while he was in the naval service. There is not a particle of proof that he contracted any while in the military service. He served his whole term of enlistment, and if he was sick or disabled during the time, no one proves it.

By reference to the proof filed in the Pension-Office, it appears that Howard enlisted as a marine July 30, 1834, and was discharged August 4, 1860, and was pensioned by reason of twenty-six years' service, at \$7 per month from March 2, 1867.

The papers show that the petitioner was married on the 10th of March, 1853, and in her application for a widow's pension, filed in June, 1873, she swears that she has no children living, a statement entirely at variance with her petition, in which she alleges she is supported by a daughter, Kate Howard, ten years of age, begging alms.

On September 18, 1867, Howard swore he was sixty-four years of age when making application for the benefit of the 6th section of the act of March 2, 1867. As he died in 1871, (not in 1872, as elsewhere alleged,) he was sixty-eight years of age at the time.

The proofs of disability exhibited by his widow at the Pension-Office show that the disease, diarrhea, of which he suffered, was of twenty years' standing ; of course it was in existence when he received the pension of \$7 per month. Why did he not found his application upon that fact, if it was true, and entitle himself to a higher pension ?

The committee feel constrained to adhere to the decision of the Commissioner of Pensions—

1st. On the ground that it is not clear that Howard died at the age of

sixty-eight of a disease contracted while in either arm of the service. It is a time of life for people to die of old age.

2d. If he did die of such disease, he was drawing a pension at the time of his death founded upon his long service as a marine, and the pension is not descendable. That pension stood in place of one for a disability, and has expired.

3d. Because he enlisted in the Army as a healthy man, and served his entire term of enlistment without any proof of disability occurring during that period.

4th. Because his disability, if such there was, existed before 1861, and it is confessed the general law does not extend to his case.

The committee therefore recommend that they be discharged from the further consideration of the petition.



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IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1874.—Ordered to be printed.

Mr. Logan submitted the following

REPORT:

[To accompany bill H. R. 1779.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 1779) for the relief of William E. Childs, having had the same under consideration, report as follows :

That the evidence shows that the facts, so far as stated in the preamble to the bill, are correctly set forth. But in addition thereto they find that, during the period mentioned for which claimant asks pay as first lieutenant, he was, in fact, acting as hospital steward and received full pay therefor, and did not serve as first lieutenant. Nor is there any evidence on file showing a vacancy during that period in the office to which said claimant was appointed.

Your committee, therefore, are of the opinion that the claim is not sustained by the evidence, and recommend that the bill do not pass, and that they be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES

January 10, 1874—Ordered to be printed.

The Senate submitted the following

REPORT:

[To accompany bill H. R. 1721]

The Committee on Military Affairs, to whom was referred the bill (H. R. 1721) for the relief of William H. Hall, having had the same under consideration, report as follows:

That the evidence shows that the facts as set forth in the report of the Committee are correctly set forth. That in addition thereto they find that during the period mentioned for which claimant asks pay as lieutenant, he was, in fact, acting as hospital steward and received full pay therefor, and did not serve as that lieutenant. That in fact, and in consequence of the showing a vacancy during that period in the office of hospital steward was appointed.

Your committee, therefore, are of the opinion that the claim is not sustained by the evidence, and recommend that the bill do not pass, and that the discharge from the further consideration of the same be ordered.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT:

[To accompany bill H. R. 363.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 363) for relief of Lucius A. Rountree, having had the same under consideration, submit the following report:

The records of the War Department show that the claimant, Lucius A. Rountree, was mustered into the service of the United States as a private in Company A, Forty-sixth Regiment of Missouri Infantry Volunteers, on the 23d day of August, 1864, at Springfield, Mo. That he was mustered in as first lieutenant of said company December 3, 1864, and that as such mustered out of service with the company, March 6, 1865. Also show that said company contained eighty-one men September 6, 1864.

Official evidence of his commission as such first lieutenant is on file, showing the date of such commission was September 13, 1864, to date of its issue.

The evidence also shows that the name of claimant, as such officer, was borne on the roll for the month of September, 1864; not mentioned in October; for November and December reports First Lieutenant Rountree absent, acting assistant quartermaster.

It is stated in affidavit of claimant and R. J. McElhany, captain of said company, that at the time they were commissioned (the commission of said captain being same date as claimant) there was no officer to muster them in; yet the evidence from the War Department shows that the captain was mustered in September 16, 1864.

But, as said claimant was not discharged as private until November 21, 1864, it is presumed that it was the want of this discharge that prevented him from being mustered in on the 16th of September.

No application has ever been made by said claimant to the War Department for pay as such first lieutenant for the time specified in said bill.

The committee recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT :

[To accompany bill H. R. 1935.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 1935) for the relief of William J. Scott, having had the same under consideration, report as follows :

The evidence on file shows clearly that claimant was appointed aid-de-camp on the staff of Brigadier-General Spears, and served honorably and faithfully as such from May 21, 1862, to October 30, 1862, never being absent from duty. But the evidence further shows, as is admitted by petitioner in his clear and candid statement of the facts, that the appointment was illegal, said claimant not holding any office at the time. An attempt was made to have him appointed lieutenant of Company I, dating back to the time of his appointment as aid-de-camp ; but he was never mustered in as such, and in fact another person was appointed and mustered in the office to which he supposed he was appointed.

The service having been faithfully performed, at a time of urgent necessity, the simple question to be decided is, will the Government pay a reasonable compensation for the services rendered by claimant ? Your committee believe that equity requires this to be done ; and as said claimant supposed he was serving as second lieutenant, your committee believe that the pay and emoluments of a second lieutenant would be a reasonable compensation, and therefore recommend that said bill be amended by substituting the word "second" for the word "first" in the fifth line, and with this amendment that the bill be passed.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT:

[To accompany bill H. R. 498.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 498) for the relief of Captain A. B. Dyer, having had the same under consideration, submit the following report:

The committee are satisfied, from an examination of the evidence, that the report of the Military Committee of the House contains a full and sufficient statement of the facts; it is therefore adopted as the report of this committee, and is in the words and figures following, to wit:

[House report No. 78, 43d Congress, 1st session.]

FEBRUARY 6, 1874.—Committed to a Committee of the Whole House and ordered to be printed.

Mr. P. M. B. YOUNG, from the Committee on Military Affairs, submitted the following report, (to accompany bill H. R. 498.)

The Committee on Military Affairs, to whom was referred the bill (H. R. 498) for the relief of Capt. A. B. Dyer, present the following report:

From the testimony presented to the committee it is shown that the claimant, in the spring of 1861, was in command of the Fort Monroe arsenal, and charged with the disbursement of public moneys on its account, part of which public moneys had been placed to his credit by the Treasury Department with the depositary at Norfolk, Va.; that he used all proper endeavors to withdraw this money, and that his action in the premises was approved by the Secretary of War and the Secretary of the Treasury.

From the reports on file in the Treasury Department it is shown that, on April 13, 1861, the sum of \$11,709.29 was to the credit of his disbursing account on the books of the depositary at Norfolk.

The amount mentioned in the joint resolution for his relief which passed the House of Representatives on January 16, 1866, was \$9,778.42, as shown by his check-book, but since that date an outstanding check for \$75 has been paid by the Treasury Department and charged to him, making the amount charged against him on the books of the Treasury \$9,853.42.

The committee are satisfied, by the proofs in the case, that he is entitled to the relief asked for, and report the accompanying bill and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill S. 459.]

The Committee on Finance, having before them the bill (S. 459) for the relief of William J. Patton, and the accompanying papers, after due consideration make this report:

Patton was collector of the first and afterward of the second collection district of Arkansas. Certain of his deputies stole, or embezzled, as is alleged, about \$36,000 of the funds coming into their hands. By this bill it is proposed to direct the accounting officers of the Treasury, in settlement with said Patton, to allow him such an amount as he may show was thus stolen or embezzled, it being first shown that such loss occurred without the fault or neglect of said collector; and provided, also, that if any part of said money so alleged to be stolen shall be hereafter recovered, the same shall inure to the United States.

Patton was collector of the first district of Arkansas (including the whole State) from July 5, 1865, to November 15, 1866, and from the latter date until June 8, 1873, he was collector for the second district in that State. In his petition he alleges that, during the years 1855-'56, there was embezzled by the deputies following the sums annexed:

Henry C. Brown.....	\$10,071 57
William Hoffman.....	13,747 25
John T. Fleming.....	7,958 18
John A. Geohegan.....	2,226 50
Andrew J. L. Barker.....	2,078 38
	36,081 88

Bearing upon the relief asked, from the immense mass of evidence, we find that the following facts are well established:

First. In support of petitioner's integrity and fidelity to duty, the evidence is overwhelming. This comes from the Internal Revenue Department, from the superintendent of internal revenue, from the governor, all the State officers, and all the members of the general assembly of Arkansas; from the judge, marshal, and district attorney of the district; from the Senators and members of the House from that State, as well as many others. Upon this subject there is no room whatever for doubt, and in this connection it is also shown that he was a gallant soldier, losing an eye, and being otherwise wounded while fighting for the cause of the Union.

Second. He entered upon the discharge of his duties just after hostil-

ities in the field ceased, and had for his district the entire State of Arkansas. At that time and for many months, and, indeed, for a year and more afterward, the perils, dangers, and difficulties incident to putting the internal-revenue system into operation, and especially that portion relating to the office of collector, can scarcely be estimated. Disorder and confusion still obtained, the system was very generally unpopular, officers were regarded as enemies, and this was particularly so in the cotton districts, where the law was most obnoxious, because it was esteemed very onerous and unjust.

Third. Because of this state of things it was next to impossible to secure the services of reliable deputies. In the subdistricts themselves it was most difficult to find such, both because of the unpopularity of the law, and the few able to take the required (iron-clad, so-called) oath. The collector was therefore compelled to take men of less pecuniary responsibility, who were willing to incur the dangers of the then state of society, for those of property would not incur such risks.

Fourth. Collector Patton exercised every precaution in his power to secure honest, faithful, and reliable deputies, and it is believed he did secure the services of the very best men he could command.

Fifth. He took from all of them bonds as required by law, with sureties at the time believed to be good, as good at least as could then be had in that State.

Sixth. The deputies, for whose default he now asks to be relieved, were stationed from one to two hundred miles from him. There was no railroad communication; the mails were quite irregular; but little, if any, communication could be had with them by the express, and it was continually hazardous to travel to or from where they were located, and especially with the funds of the Government.

Seventh. He was as constant in his supervision of these deputies as it was well possible for him to be, and there is nothing to show that he had any suspicion of their default or neglect of duty until this money was gone, when he at once instituted the most thorough measures to protect himself and the Government. All of them were indicted; two of them (those most largely in default) were tried, convicted, sentenced to seven years in the penitentiary, and to heavy fines, and were soon pardoned by the President. (The ground of pardon was that they were more "sinned against than sinning," being young men of blameless lives and led into dissipation and gambling, whereby they lost this money, by the arts and machinations of professional gamblers.) The others were also indicted, and, as far as known, not yet tried. There is nothing to show that Patton was in the least negligent in accepting sureties or making these appointments. They were all men of supposed good character, and were highly and strongly recommended. In every instance Patton either brought suit on the bonds given by his deputies, or makes it appear that suit would be unavailing, by reason of the insolvency of the sureties. In 1867 and 1868, owing to successive failures of the cotton-crop, it appears that there was almost universal bankruptcy in the State, and that the sureties (supposed and believed to be good at the time of taking the bonds, and many of them actually so) either died insolvent, or, if living, have abandoned the country, or are without any means whatever from which to make this money. In no instance, either by suit or otherwise, has he been able to realize a cent from these bonds, though he has been diligent in endeavoring to enforce the same.

Eighth. Owing to the tax on cotton, especially during the shipping season, and the large extent of his district, he was required to, and the

public interest demanded that he should, appoint a great number of deputies; as the record shows, from twenty to sixty, and at times even more. During his services as collector, he had over one hundred deputies, and all were faithful, neither the Government nor petitioner losing by any, except those for whose default he now asks relief. These deputies collected and accounted for two or three hundred thousand dollars, and Patton faithfully paid over to the Government all other sums for which he was liable, amounting to at least two millions.

Ninth. The supervisor of internal revenue for the district says that Mr. Patton "proved himself honest, faithful, and energetic in the discharge of his duties." The Commissioner of Internal Revenue, under date of January 29, 1872, says that the documentary evidence on file in his office indicates that the amount due was embezzled by his deputies, without fault or negligence on his part, and that it is a proper case to be presented to Congress. A former Commissioner, Mr. Rollins, under date February 10, 1869, in a letter to the Senate committee, says that the resolution (S. 992—in substance the bill now before us) seems to be an unobjectionable one, and the relief therein asked, if granted, would facilitate the final adjustment of his accounts.

We only add to these facts, that there were no banks nor Government depositories near where these deputies were, nor any safe means of transmitting the funds. During the cotton season the collections were at times heavy, amounting, in some instances, to as much as \$5,000, in the aggregate, in one day. As a consequence of these obstacles to communication and transportation large sums would accumulate in the hands of deputies, and larger than would be allowable under more favorable circumstances for their transmission or deposit. Patton undertook the execution of this law, without experience, (the law was just then put in operation,) unassisted by the work of a predecessor, and among a people largely opposed to the laws of the United States, and who lost no opportunity to set them at defiance. He is in indigent circumstances, and the loss, if it comes, must fall upon his sureties, leaving him, however, still liable, after a faithful service of ten or more years, with next to no gain to himself. And it is worthy of remark that the integrity of this official, and the confidence of the Department in him, are shown by the fact that he was kept continuously in this office until the last year, and that he then retired on the consolidation of the offices of collector and assessor, and not because the Government distrusted his honesty or capacity.

Upon these facts the question is, Shall the relief proposed by this bill be granted? It will be seen that it does not fix any amount. It leaves the whole matter, upon the conditions and under the restrictions therein named, to the proper accounting officers. And yet we are substantially to determine whether he shall, by congressional action, be relieved from an undoubted and undenied legal liability.

The writer of this report has always been disinclined, and still is, to grant relief in such cases. His view has been, and is, that these officers should be held to an absolute and unconditional liability; that they voluntarily assume the responsibilities of their positions, are presumed to know their duties and dangers, accept and assume all for the salaries provided; and that aid by the extraordinary interposition of Congress fosters carelessness, encourages fraud, and a want of necessary watchfulness over subordinates. And yet he cannot forget that there are many precedents for the relief here asked, in cases certainly not so strong nor so equitable as this, and yet granted with but little if any

opposition. Reference is here made to the following among other and many cases which might be cited:

The case of Thomas & Webster, collectors of customs and depositary, Baltimore, Md., 16 Stat., 723.

John T. Mason, collector of customs, Baltimore, 17 Stat., 723.

Richard R. Bolling, surveyor of customs, Louisville, Ky., 17 Stat., 704.

F. E. Spinner, United States Treasury, 17 Stat., 768.

Logan H. Roots, collector first district Arkansas.

(By no means so strong a case as this.)

The case of Hillhouse, collector at New York, at this session.

If these cases were properly decided, and it is too late, perhaps, to gainsay them, then certainly this is of easy disposition. The bill is almost in exact language with that for the relief of Roots and Mason. There seems to have been fidelity, the absence of fraud or negligence, (but all this is still to be left to the accounting officers.) The officer undertook his work surrounded by extraordinary hazards. It was difficult to find those who would do this. The Government needed revenue from all sources, from the States then being reconstructed, as well as elsewhere. It did derive a large revenue in this State, and attributed not a little to the diligence and watchfulness of this excellent officer. The percentage of loss is not much, if any, more than that sustained in other States or districts, where order obtained, where the laws were respected, and where those of undoubted integrity and responsibility could be found to fill subordinate positions. The Executive, by his order of pardon, not, it must be borne in mind, because of belief in the innocence of the convicts, but for reasons hereinbefore stated, if he has not relieved them from their liability to petitioner, at least recognized the abnormal condition of society where the crimes were committed, and that officials should not be held to a liability essential and not to be relaxed, under other and more favorable circumstances.

Looking, therefore, at all the circumstances, believing them to be such in view of the precedents as to warrant the equitable interposition of the law-making power, we recommend the passage of this bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1874.—Ordered to be printed.

Mr. STEVENSON submitted the following

REPORT:

[To accompany bill H. R. 826.]

The Committee on the Judiciary, to whom was referred House bill for the relief of Elias C. Boudinot, have had the same under consideration, and beg leave to report:

It appears that Elias C. Boudinot established a factory for the manufacture of tobacco in the Cherokee Nation. At that period there was no law imposing taxes whatever upon members of the Indian tribes inhabiting what is known as the Indian Territory; but, on the part of the Cherokee Nation of Indians, it appears that a special provision of their treaty with the United States of July 19, 1866, exempted all Cherokees resident in that nation from taxation of every kind. The tenth article of that treaty is in words and figures following, to wit:

Every Cherokee and freed person, resident in the Cherokee Nation, shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market, without any restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

Mr. Boudinot proceeded in his business of manufacturing tobacco without doubt of his right to do so, in the Indian Territory, he being an Indian by blood and a bona-fide resident of said Territory, without being subject to any tax for tobacco so manufactured and sold in said Territory.

Congress enacted, on July 20, 1868, imposing and regulating taxes on liquors and tobacco. The 107th section of that act provided—

That the internal-revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars, shall be held and construed to extend to such articles produced everywhere within the exterior boundaries of the United States, whether the same shall be within a collection-district or not.

Early in 1869, Boudinot applied to the Commissioner of Internal Revenue, Hon. E. A. Rollins, to know if the 107th section applied to tobacco manufactured in the Indian Territory.

Upon 23d February, 1869, Mr. Rollins officially informed Boudinot:

Notwithstanding the language of the said section, the tax could not be collected upon tobacco manufactured in the Indian country, so long as it remained in said country, but upon its being brought within any collection-district of the United States, it would be liable to seizure and forfeiture, unless it be stamped thus, and only the tax imposed by law had been paid.

Upon the succession of Hon. Columbus Delano to the office of Commissioner of Internal Revenue, it appears that Boudinot applied to him for his construction of this 107th section ; after a thorough examination of the Cherokee treaties, and the act of July 20, 1868, Mr. Delano replied by the following opinion :

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, October 25, 1869.

GENTLEMEN : This office does not propose to apply within the territories of the Cherokee Nation the revenue laws relating to tobacco and spirits produced there ; but holds that section 107 of said act of 20th of July, 1868, applies to the articles themselves and will be enforced when those articles are carried into the States or Territories of the United States for sale. The grounds of this determination and the instructions given to the revenue officers are more fully explained by the accompanying memorandum of opinion by Judge James, to whom the question was originally referred.

Very respectfully,

Messrs. PIKE & JOHNSON,
Attorneys at Law.

C. DELANO,
Commissioner.

The opinion of Judge James, is as follows:

In the matter of taxes on tobacco produced in the territory of the Cherokee Nation.

SIR : I have examined the argument of Colonel Elias C. Boudinot, a citizen of the Cherokee Nation, against the collection within its territory of taxes upon tobacco manufactured there, and have the honor to make the following reply :

The question whether section 107 of the act of 20th July, 1868, intended that the revenue laws relating to tobacco and spirits produced in "the Indian country" should be extended *into* that country and there enforced, was submitted to me by yourself about the 12th day of August last. I had the honor to advise you that, without any reference to existing treaties, it was apparent, on the face of the statute itself, that Congress did not intend to apply the revenue laws to the Indian country itself, but to the *articles* produced there, and that the application could be made only to such part of these manufactures as might be carried thence into the States or Territories of the United States. The action of your office was afterward taken in accordance with this advice, and instructions to that effect were sent, as I was informed, to the revenue officers of Kansas, Missouri, and Texas.

CHARLES P. JAMES,
Counselor at Law.

HON. COLUMBUS DELANO,
Commissioner of Internal Revenue.

The opinion of the Commissioner of Internal Revenue, Mr. Delano, was forwarded with Judge James's opinion to Boudinot, by his attorneys, Messrs. Pike and Johnson, about 1st December, 1869.

Very soon thereafter, the tobacco factory of Boudinot, with everything pertaining thereto, was seized by the revenue officers of the United States in the Indian country. Boudinot was also arrested and held to bail in the sum of twenty-five hundred dollars, to answer a criminal charge before the next term of the United States court for the western district of Arkansas.

And civil proceedings were also instituted against Boudinot in the United States court for the western district of Arkansas ; a good deal of his tobacco was sold.

At the May term, 1870, of said court, Boudinot, for himself and his copartner, Stand Wattie, interposed, and by his answer submitted, among others, the following allegations :

That the claimants, Boudinot and Wattie are Cherokee Indians by blood, and residents of the Cherokee Nation. That the manufactory of tobacco was carried on in the Cherokee Nation, and that the manufactured tobacco, raw material, and other property were never within any collection district of the United States, nor subject to the taxes mentioned in the libel, nor were the owners bound to comply with the re-

quirements of the laws of the Congress; that the revenue laws were complied with as to all tobacco sold or offered for sale outside of said Indian country, if any such there were, and that said firm was the sole owner of the property described in the libel; and that the property libeled was found and seized in the Cherokee Nation, outside of any revenue collection district of the United States.

At the trial the claimants moved the court to instruct the jury that the act of Congress imposing the taxes already referred to, approved 20 July, 1868, is not in force in any part of the Indian Territory embraced in the western district of Arkansas; that the tenth article of the treaty of 1866, between the Cherokee Nation and the United States, was in full force with reference to the territory of the Cherokee Nation; that section 107 of the act of 1868 requires stamps to be sold only to manufacturers of tobacco in the respective collection districts, and that it gave the claimants no legal right to buy said stamps to place on their tobacco in the Cherokee Nation, and that they are not responsible for not having done so.

The court refused to give these instructions. The jury found for the United States, and judgment was entered accordingly.

The claimants excepted to the refusal of the court to give the instructions asked for, and an appeal was prayed to the Supreme Court of the United States.

At the December term of the last-mentioned tribunal, said judgment was by a divided court affirmed, and is reported in 11 Wallace Reports, 616. Judges Bradley, Nelson, Field, and Chief Justice Chase dissenting.

A majority of the court held that the second section of the fourth article of the Constitution of the United States declares: "That this Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties which shall be made under the authority of the United States, shall be the supreme law of the land.

"It need hardly be said that a treaty cannot change the Constitution, or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our Government. The effect of treaties and acts of Congress, when in conflict, is not settled by the Constitution of the United States. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, (*Foster & Elam vs. Neilson*, 2 Peters, 314;) and an act of Congress may supersede a prior treaty, (*Taylor vs. Morton*, 2 Curtis, R., 454; 1 Walworth, 155.)

"In the cases referred to, these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved, and require their faithful observance, cannot be more obligatory. They have no higher sanctity, and no greater inviolability or immunity from legislative invasion can be claimed for them. The consequences in all such cases give rise to questions which must be met by the political department of the Government. They are beyond the sphere of judicial cognizance. In the case under consideration, the act of Congress must prevail, as if the treaty were not an element to be considered; if a wrong has been done the power of redress is with Congress, not with the judiciary, and that body, upon being applied to, it is to be presumed, will promptly give the proper relief.

"We are glad to know that there is no ground for any imputation upon the integrity or good faith of the claimants, who prosecuted the writ of error. In a case not free from doubt and difficulty they acted under a misapprehension of their legal rights."

It will be perceived from letters from the Internal Revenue Department, addressed to the Attorney-General, and from letters from the Attorney-General himself, that these officers deemed, after the decision of the Supreme Court, as quoted above, that they could not properly interfere, either by a compromise with the claimants, or by dismissing the proceedings against them. They referred the claimants to relief by Congress, as suggested by the Supreme Court.

The House of Representatives passed a bill during the last Congress, giving to Boudinot the relief sought.

The Attorney-General strongly recommends the passage of an act giving relief to the claimant, Boudinot.

From a mistake in the construction of the 107th section of the internal-revenue act of 20th July, 1868, involved in great doubt, and on which the Supreme Court of the United States were almost equally divided, Boudinot has already been subjected to great loss of his property which was seized and sold by the United States, and to a very expensive litigation. He does not ask a return of this property; he simply asks the discontinuance and dismissal of pending proceedings in the United States court in the western district of Arkansas against him. Rarely has a claimant come before Congress with stronger claims for its equitable jurisdiction; approved by the Supreme Court of the United States, by the law department of the Government, by the Internal Revenue Department, and by your committee.

They recommend unanimously the passage of a bill for the relief of E. C. Boudinot, in lieu of the House bill. They append to their report the letters of Attorney General Williams and the Commissioner of Internal Revenue touching this claim and recommending relief.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill S. 587.]

The Committee on the Judiciary, to whom was referred the resolution of the Senate of the 12th of March last, have made the inquiry therein directed and submit the following report:

The resolution is in the following words:

Resolved, That the Committee on the Judiciary be instructed to inquire and report at the December session of the Senate whether the Union Pacific Railroad Company, or any company authorized to build a branch road to connect therewith, or any assignee of such company, will be entitled to lands or bonds for any road which such company may hereafter construct; and that, until said committee shall report, the executive officers of the Government are requested to issue no bonds or patent-certificates that may be claimed for roads constructed and reported after this date.

By its terms the resolution directed us to inquire “whether the Union Pacific Railroad Company, or any company authorized to build a branch road to connect therewith, or any assignees of such company, will be entitled to lands or bonds for any road they may hereafter construct.” The investigation, however, discloses that the “Central Branch Union Pacific Railroad Company” is the only one making such claim; and we have hence, as we suppose, properly and necessarily confined ourselves to this claim. The history of this claim runs through many years, is found in the action of the company, the rulings of the Departments, the legislation of Congress, and is not a little difficult to understand. As an answer to the inquiry, however, is found largely in several acts of Congress, it will be our first duty to present, as briefly as may be, this legislation.

On the first day of July, 1862, an act was passed “to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,” which, as far as material, contained the following provisions:

The persons named in the first section were created a body-corporate by the style of “The Union Pacific Railroad Company;” and the said corporation was authorized “to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north valley of the margin of the Platte River, in the Territory of Nebraska, to the western boundary of Nevada Territory, upon the route and terms hereinafter provided.”

By the *third* section it was provided "that there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile, on each side of said railroad, on the line thereof, and within the limits of ten miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

The fourth section provides that where the company shall have completed forty consecutive miles of said road, ready for service, &c., three commissioners shall be appointed by the President to examine the same, and if it shall appear that such forty miles have been completed, &c., patents shall issue for the lands aforesaid, and so on, for each forty miles, as the same may be completed. Then follows the proviso: "That no such commissioners shall be appointed by the President of the United States unless there shall be presented to him a statement, verified on oath by the president of said company, that such forty miles have been completed in the manner required by this act, and setting forth with certainty the points where such forty miles begin and where the same end; which said oath shall be taken before a judge of a court of record."

The fifth section declares: "That for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of \$1,000 each, payable in thirty years after date * * * to the amount of sixteen of said bonds per mile for such section of forty miles."

Other portions of the act, material, are as follows:

SEC. 7. *And be it further enacted*, That said company shall file their assent to this act, under the seal of the company, in the Department of the Interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning, as herein provided, to the western boundary of Nevada Territory, before the first day of July, one thousand eight hundred and seventy-four: *Provided*, That within two years after the passage of this act said company shall designate the general route of said road as near as may be, and shall file a map of the same in the Department of the Interior, whereupon the Secretary of the Interior shall cause the lands within fifteen miles of said designated route or routes to be withdrawn from pre-emption, private entry, and sale; and when any portion of said route shall be finally located, the Secretary of the Interior shall cause the said lands hereinbefore granted to be surveyed and set off as fast as may be necessary for the purposes herein named: *Provided*, That in fixing the point of connection of the main trunk with the eastern connections, it shall be fixed at the most practicable point for the construction of the Iowa and Missouri branches, as hereinafter provided.

That the line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude, west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, at a point to be fixed by the President of the United States, after actual surveys; thence running westerly upon the most direct, central, and practicable route through the territories of the United States, to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

That the Leavenworth, Pawnee and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line from the Missouri River, at the mouth of the Kansas River, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned, and to meet and connect with the same at the meridian of longitude aforesaid; and in case the general route or line of road from the Missouri

River to the Rocky Mountains should be so located as to require a departure northwardly from the proposed line of said Kansas Railroad before it reaches the meridian of longitude aforesaid, the location of said Kansas road shall be made so as to conform thereto; and said railroad through Kansas shall be so located between the mouth of the Kansas River as aforesaid, and the aforesaid point on the one hundredth meridian of longitude, that the several railroads from Missouri and Iowa herein authorized to connect with the same can make connection within the limits prescribed in this act, provided the same can be done without deviating from the general direction of the whole line to the Pacific coast. The route in Kansas west of the meridian of Fort Riley to the aforesaid point on the one hundredth meridian of longitude to be subject to the approval of the President of the United States, and to be determined by him on actual survey.

That the said company chartered by the State of Kansas shall complete one hundred miles of their said road, commencing at the mouth of the Kansas River, as aforesaid, within two years after filing their assent to the conditions of this act, as herein provided, and one hundred miles per year thereafter until the whole is completed. * * And the Hannibal and Saint Joseph Railroad, the Pacific Railroad Company of Missouri, and the first-named company, or either of them, on filing their assent to this act, as aforesaid, may unite upon equal terms, under this act, with the said Kansas company in constructing said railroad and telegraph to said meridian of longitude, with the consent of the said State of Kansas.

The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that when completed cars can be run from the Missouri River to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected, continuous line.

That the Hannibal and Saint Joseph Railroad Company of Missouri may extend its roads from Saint Joseph via Atchison, to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions in all respects, for one hundred miles in length next to the Missouri River, as are provided in this act for the construction of the railroad and telegraph line first mentioned, and may for this purpose use any railroad charter which has been or may be granted by the legislature of Kansas: *Provided*, That if actual survey shall render it desirable, the said company may construct their road, with the consent of the Kansas legislature, on the most direct and practicable route west from Saint Joseph, Missouri, so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the one hundredth meridian of west longitude, or with the main trunk-road at such point; but in no event shall lands or bonds be given to said company, as herein directed, to aid in the construction of their said road for a greater distance than one hundred miles. And the Leavenworth, Pawnee and Western Railroad Company of Kansas may construct their road from Leavenworth to unite with the road through Kansas.

The fourteenth section authorizes the Union Pacific Railroad Company to construct a road from the western boundary of Iowa to connect with the line of said company at some point on the one hundredth meridian of longitude, and also, in a certain event, a road from Sioux City to a point so as to connect with the road to be constructed from the western boundary of Iowa, or with the Union Pacific Road, said point of junction to be fixed by the president, but not farther west than the one hundredth meridian.

The fifteenth section gives to any other company the right to connect with the "road and branches" provided by this act.

Then, by the seventeenth and eighteenth sections it is declared "That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all said railroads before mentioned, and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling-stock, machine-shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States. And the better to accomplish the object of this act, namely, to promote

the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may at any time—having due regard for the rights of said companies named herein—add to, alter, amend, or repeal this act.”

By the act of the 3d of March, 1863, the gauge of the Pacific Railroad and its branches, *throughout its whole extent*, was established at 4 feet 8½ inches.

On the 2d of July, 1864, an act amendatory to the act of July 1, 1862, was passed, which contains among others the following provisions:

Section five extended the time for designating the general route of said Union Pacific Railroad, and filing the map of the same, and for the completion “of that part of the railroads required by the terms of said act of each company” one year from the time in the original act designated.

Section nine has this provision: “That any company authorized by this act to construct its road and telegraph line from the Missouri River to the initial point aforesaid may construct its road and telegraph line so as to connect with the Union Pacific Railroad at any point westwardly of such initial point, in case such company shall deem such westward connection more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road, such company shall be entitled to all the benefits and be subject to all the conditions and restrictions of this act: *Provided further, however*, That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided, if the same had united with the Union Pacific Railroad, on the one hundredth degree of longitude; nor shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided.

The twelfth and sixteenth sections, having, as is urged, an important bearing upon the questions involved, are here quoted in full:

And be it further enacted, That the Leavenworth, Pawnee and Western Railroad Company, eastern division, shall build the railroad from the mouth of Kansas River by the way of Leavenworth, or if that be not deemed the best route, then the said company shall, within two years, build a railroad from the city of Leavenworth to unite with the main stem at or near the city of Lawrence, but to aid in the construction of said branch the said company shall not be entitled to any bonds. And if the Union Pacific Railroad Company shall not be proceeding in good faith to build the said railroad through the Territories when the Leavenworth, Pawnee and Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall have completed their road to the hundredth degree of longitude, then the last-named company may proceed to make said road westward until it meets and connects with the Central Pacific Railroad Company on the same line. And the said railroad from the mouth of Kansas River to the one hundredth meridian of longitude shall be made by the way of Lawrence or Topeka, or on the bank of the Kansas River opposite said town. Provided no bonds shall be issued or land certified by the United States to any person or company for the construction of any part of the main trunk line of said railroad west of the one hundredth meridian of longitude and east of the Rocky Mountains, until said road shall be completed from or near Omaha, on the Missouri River, to the said one hundredth meridian of longitude.

And be it further enacted, That any two or more of the companies, authorized to participate in the benefits of this act, are hereby authorized at any time to unite and consolidate their organizations, as the same may or shall be upon such terms and conditions, and in such manner as they may agree upon, and as shall not be incompatible with this act or the laws of the State or States in which the roads of such companies may be, and to assume and adopt such corporate name and style as they may agree upon; with a capital stock not to exceed the actual cost of the roads so to be consolidated, and shall file a copy of such consolidation in the Department of the Interior; and thereupon such organization so formed and consolidated shall succeed to, possess, and

be entitled to receive from the Government of the United States, all and singular the grants, benefits, and immunities, guarantees, acts, and things to be done and performed, and be subject to the same terms, conditions, restrictions, and requirements, which said companies respectively, at the time of such consolidation, are or may be entitled or subject to under this act, in place and substitution of said companies so consolidated respectively. And all other provisions of this act, so far as applicable, relating or in any manner appertaining to the companies so consolidated, or either thereof, shall apply and be of force, as to such consolidated organization. And in case upon the completion by such consolidated organization of the roads, or either of them, of the companies so consolidated, any other of the road or roads of either of the other companies, authorized as aforesaid, (and forming, or intended or necessary to form, a portion of a continuous line from each of the several points on the Missouri River, hereinbefore designated, to the Pacific coast,) shall not have constructed the number of miles of its said road within the time herein required, each consolidated organization is hereby authorized to continue the construction of its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith; and for and in aid thereof the said consolidated organization may do and perform, in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular, the several acts and things hereinbefore provided, authorized, or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guarantees, acts, and things to be done and performed by the the Government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners, in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions so far as the same are applicable thereto. And said consolidated company shall pay to said defaulting company, the value, to be estimated by competent engineers, of all the work done, and material furnished by said defaulting company, which may be adopted and used by said consolidated company in the progress of the work under the provisions of this section: *Provided, nevertheless,* That said defaulting company may at any time before receiving pay for its said work and material, as hereinbefore provided, on its own election, pay said consolidated company the value of the work done and material furnished by said consolidated company, to be estimated by competent engineers, necessary for and used in the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits, and privileges which shall be acquired, possessed, or exercised pursuant to this section, shall be to that extent an abatement of the rights, benefits, and privileges hereinbefore granted to such other company. And in case any company authorized thereto shall not enter into such consolidated organization, such company, upon the completion of its road, as hereinbefore provided, shall be entitled to, and is hereby authorized to, continue and extend the same, under the circumstances, and in accordance with the provisions of this section; and to have all the benefits thereof, as fully and completely as are herein provided, touching such consolidated organization. And in case more than one such consolidated organization shall be made pursuant to this act, the terms and conditions of this act, hereinbefore recited as to one, shall apply in like manner and force and effect to the other: *Provided, however,* That rights and interests at any time acquired by one such consolidated organization shall not be impaired by another thereof. It is further provided that, should the Central Pacific Railroad Company of California complete their line to the eastern line of the State of California, before the line of the Union Pacific Railroad Company shall have been extended westward so as to meet the line of said first-named company, said first-named company may extend their line or road eastward one hundred and fifty miles, on the established route, so as to meet and connect with the line of the Union Pacific Road, complying in all respects with the provisions and restrictions of this act as to the Union Pacific Road, and upon doing so shall enjoy all the rights, privileges, and benefits conferred by this act on said Union Pacific Railroad Company.

The fifteenth section, it is necessary to here state, provides that the several companies are required to operate and use said roads for all purposes of commerce, travel and transportation, so far as the Government and the public are concerned, as one continuous line.

It is provided in the eighteenth section that the Burlington and Missouri Railroad Company may extend its road from the point where it strikes the Missouri River, south of the mouth of the Platte, to a point not farther west than the one hundredth meridian. To enable it to do

this it is given the right of way through the public lands, the right to take stone, timber, earth, and all materials, and, to further aid, alternate sections of land are granted to the amount of ten sections on each side.

The next act in order in any way bearing upon this inquiry is that of July 3, 1866; the first and only section, material, being as follows:

That the Union Pacific Railroad Company, eastern division, is hereby authorized to designate the general route of their said road, and to file a map thereof, as now required by law, at any time before the 1st day of December, 1866, and upon the filing of the said map, showing the general route of said road, the lands along the entire line thereof so far as the same may be designated shall be reserved from sale by order of the Secretary of the Interior: *Provided*, That said company shall be entitled to only the same amount of the bonds of the United States to aid in the construction of their line of railroad and telegraph, as they would have been entitled to if they had connected their said line with the Union Pacific Railroad on the one hundredth degree of longitude, as now required by law: *And provided further*, That said company shall connect their line of railroad and telegraph with the Union Pacific Railroad, but not at a point more than fifty miles westwardly from the meridian of Denver, in Colorado

From this legislation it will be seen that the main trunk of the road was to commence on the one hundredth meridian, and that there were to be four branches—one from Sioux City; one known as the extension of the Hannibal and Saint Joseph Road from Atchison; one styled “the road through Kansas,” and the fourth from Omaha. This omits the Burlington and Missouri branch from the Missouri River, as provided by the act of 1864, which need not be now included, but which is of some importance in the argument, as we shall hereafter show.

In this inquiry it is only necessary to advert to the road from *Atchison* and the road “through Kansas.”

The road “through Kansas” was to be constructed by the Leavenworth, Pawnee and Western Railroad Company, from the mouth of the Kansas River to the one hundredth meridian. The Hannibal and Saint Joseph Road was to extend from Saint Joseph, Mo., via Atchison, to connect (conditionally) with the road “through Kansas.”

The “Central Branch,” the only company now claiming additional lands and bonds, it is not denied, for the purposes of this report, has succeeded by regular assignment to all the rights of the Hannibal and Saint Joseph Company.

The “road through Kansas” designated its general route and filed a map in the Department of the Interior on the 19th of July, 1862, and also filed a new map of general location on the 1st day of July, 1865, both setting forth the design to connect with the main trunk at the one hundredth meridian. The Central Branch filed its map June 27, 1863, and completed its one hundred miles from the Missouri, via Atchison, within the time required by law, to wit, on the 30th day of December, 1869. The commissioners reported on the 13th of January, 1868, and it was accepted by the President on the 20th of the same month, and the company received its bonds and a portion of its lands.

The “road through Kansas” has not completed its road within the time required by the acts of 1862 and 1864, but had complied with all statutes in force bearing upon it up to the passage of the act of July 3, 1866.

By reference to the map it is found that the initial points of these two roads on the Missouri River are about thirty miles apart; and that the Atchison Road is one hundred miles or more below where the Burlington and Missouri Road crosses, the latter being about twenty-five miles below Omaha.

And thus having all the legislation bearing directly or indirectly, as is believed, upon the question before us, we turn to its departmental his-

tory; for it has such history, having been before the Departments in various forms at various times; has been considered apparently with great care, after the most elaborate argument by the most eminent counsel, and the rulings made assist not a little in the solution of the vexed problem.

We will endeavor to state this history as nearly in its chronological order as possible.

December 5, 1866, this company (then the Atchison and Pike's Peak Company) first made claim to extend its road to connect with the Union Pacific Road, and to receive subsidy, &c.

There is nothing on the files to show when the "eastern division" commenced work under the act of July 3, 1866, but they filed a map of general route July 11, 1866, and of definite location May 8, 1869.

On the 10th of March, 1866, the Secretary of the Interior made an order restoring to market the lands theretofore withdrawn upon the application of the Union Pacific Railroad Company, "eastern division."

The Atchison and Pike's Peak Company, (or, as we shall hereafter call it, the Central Branch,) having requested him to reconsider this order, he, on the 19th of February, 1869, addressed a letter to the Commissioner of the General Land-Office, reviewing the application, the claim being that under the law the said company was entitled to extend its road from its intersection with such vacated line, and on the latter to the one hundredth meridian, and to receive aid in the way of lands and bonds. This letter (from the then Secretary, Mr. Browning) fully reviews the entire claim, declines to withdraw the lands, and very clearly and unequivocally denies the right of the company to build the road over the vacated line and claim subsidy and lands therefor. And this opinion was reiterated in the annual report of the Secretary of 1868, wherein he refers to the completion of the one hundred miles of their road.

In this connection it further appears that a petition, similar to that afterward presented to the present Secretary of the Interior, (of April 12, 1871,) was presented to Secretary Browning, of date February 8, 1869, and that Mr. Browning indorsed thereon as follows:

There are intricate and difficult questions involved in this case, *as* it is now presented, affecting very large and important interests, and requiring more time for their examination, consideration, and decision, than it is in my power now to bestow, and I deem it my duty, therefore, to let the whole subject go over for my successor.

O. H. B.

MARCH 3, 1869.

It also appears that Secretary Cox, on the 28th of March, 1870, made an order withdrawing certain lands for the benefit of the Saint Joseph and Denver City Railroad Company; and upon being interrogated whether such reservation was intended for the benefit of the claimant, answered, on the 27th of May following, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 27, 1870.

SIR: In reply to your inquiry, I would state that the reservation of any existing adverse rights, whether individual or corporate, &c., in the order of March 28 last, directing a withdrawal of lands on account of the Saint Joseph and Denver City Railroad Company, was intended for the benefit of the Central Branch Union Pacific Railroad Company in case their right to construct their road to a connection with the Union Pacific Railroad should be recognized by proper authority or by Congress, and the representatives of the former company were so informed when the order was issued.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

E. H. NICHOLS, Esq.,

Treasurer Central Branch Union Pacific Railroad Company, Washington, D. C.

The Central Branch (for the hundred miles west of the Missouri River) filed a map of the general route on the 8th of July, 1863, and of definite location March 4, 1866.

On the 27th of January, 1870, Secretary Cox, in a letter to the President, refers to the decision of Secretary Browning, to the fact that counsel for the company had asked that the question should be re-examined—says, “that he has determined not to disturb the decision” before made, and states, not, however, at very great length, the considerations influencing his conclusions.

On the next day, January 28, 1870, the Secretary made known to the Commissioner of the General Land-Office, by written communication, that he should not disturb the rulings of his predecessor; and concurs in the opinion “that the asserted right of the company to subsidies in lands and bonds in aid of the construction of a road on such vacated line cannot be recognized under existing legislation.”

Prior to the 8th of May, 1871, the company filed its petition to the Secretary of the Interior, (Mr. Delano,) asking to file its map showing the extension and continuation of its road to a connection with the one hundredth meridian, to withdraw lands, &c. The President, on the 20th of April, 1871, refers the petition, requesting the Secretary to hear the parties and decide the claims on its merits. The Secretary, accordingly, on the said 8th of May, 1871, addressed a communication to the Attorney-General, in which he recites quite fully the legislation, what had been done by the several companies thereunder, and asking his opinion upon the questions involved, and especially upon this: “Is the Central Branch authorized to file its map of the route of such extended road, and entitled upon the completion of the same to the lands originally granted to the ‘road through Kansas?’” To this the Attorney-General responded on the 3d of June, 1871, reviewing at great length all of the legislation, as also the acts of the company, and concluding with the opinion that the claim of the company should be rejected. The opinion is very full, discussing all the points raised, and to it we may refer more at length hereafter.

June 19, 1871, the Attorney-General being absent, Mr. Bristow, Acting Attorney-General, telegraphed him that the attorneys for the company had addressed a letter to the Secretary of the Interior asking a rehearing, and that the Secretary concurred in the opinion that such hearing should be had. To this the Attorney-General replied, on the next day, “No objection to rehearing on new facts.”

August 11, 1871, the Attorney-General wrote to Hon. S. C. Pomeroy that he could have no further connection with question unless requested thereto by the Secretary of the Interior; that he presumed that the Secretary would not make such request unless apprised of new facts, and that if such facts exist he should not object to a reconsideration of the subject.

August 25, 1871, Mr. Nichols, one of the attorneys for the company, presented to the Secretary a quite lengthy and detailed statement as a ground for a review of his decision by the Attorney-General, showing or tending to show surprise, want of full opportunity on the part of the company to be heard, &c. This was transmitted to the Attorney-General on the 9th of September, 1871, and on the same day Mr. Nichols was advised by Mr. Akerman that he was willing to hear the parties further, by a time named by him; after that, in view of engagements, he would not promise to hear them; that he would, however, review his opinion, and if led to believe that any material consideration had been overlooked he would invite further argument, and give notice accord-

ingly ; but if he had no cause to suspect error or oversight, the opinion before rendered would be considered as final upon the question involved.

August 28, 1871, the Acting Secretary, (Cowan,) referring to this opinion, as also to a letter from the Attorney-General to Hon. S. C. Pomeroy, (without date,) and also to the fact that the company had submitted a statement embodying new facts, as they claimed, (meaning this statement of Nichols and others, doubtless,) returned to the Attorney-General his opinion "in order that the same might be reconsidered."

October 23, 1871, the Secretary, referring to the opinion and the letter of the 28th of August, proceeded to state that on that date the company had withdrawn their application to file map and have lands withdrawn ; that the same had been granted, and that nothing being before the Department there was no necessity for giving the subject further consideration.

On the 30th of the same month the Secretary advised the President, by letter, that he had received from the company a map showing the general direction and route of their road from its terminus to the one hundredth meridian, as also a resolution of the company adopting said route as a continuation of their road, if approved by the President. The map and resolution were transmitted with the letter, showing the request of the company of the 26th of the month, that the map and route might be approved by the President.

On the next day E. C. Ingersoll, attorney for the Saint Joseph and Denver City Railroad Company, addressed a letter to the Attorney-General, asking him to transmit to the Department of the Interior his opinion of the 3d of June, 1871, to the end that it might be promulgated without unnecessary delay. To this the Attorney-General, on the 19th of November following, replied that he had informed the Secretary of the Interior that his opinion upon the subjects involved was unchanged, and, further, that the opinion referred to would be transmitted to the Secretary if he wished it.

August 29, the Attorney-General asked of the Acting Secretary a copy of the statement of the company asking a re-examination of their claim, and this was transmitted to him on the next day.

September 5, 1871, the Attorney-General addressed a letter to the Secretary of the Interior, setting forth that Mr. Nichols, of counsel for the company, was entirely mistaken as to the attention which the question had received at his hands when giving his opinion on the 3d of June. He proceeds to state that counsel were heard for several hours, and to set out in detail the papers, laws, opinions, speeches, letters, and other facts and documents examined by him. He further states that he will still hear counsel during that week, either at his office or in New York.

November 17, referring to the letter of the Secretary of the 23d ultimo, advising him that the company had withdrawn its application, &c., he takes occasion to refer to the application of the company for rehearing, to his expressed willingness to hear them ; that while matters were in this position the opinion had been returned to him ; that no cause to change his opinion had been shown ; that the parties had declined to avail themselves of the opportunity to present the case when offered ; that the opinion was subject to be transmitted to him if desired ; that it was duly rendered ; that it was never intended in consenting to a rehearing to recall it, nor as a suspension of his opinion ; and that the views expressed remain unchanged.

On the 15th of March, 1873, the Secretary of the Interior advised the Attorney-General that the company had asked that the lands along

the contemplated extension, (from Fort Riley to the one hundredth meridian,) might be withdrawn; and the inquiry was submitted whether it would be proper for the President to approve the map for said extension with the distinct understanding that it was done solely for the purpose of causing a withdrawal of the lands, and without committal upon the question of the right of the company to the lands. To this there was a response on the 17th of the same month, by Solicitor General Phillips, that the lands might be conditionally withheld, and that a provisional approval of such map, "made expressly for such purpose alone, and without prejudice to the right of the President of disapproving it in the end," would be proper, and would not commit him in regard to his final action.

There is no question as to the assent of the company to the provisions of the act of 1862. This was formally resolved on the 16th of June, 1863, and the Government duly notified.

The files and records in the Interior Department contain nothing to show that the President ever "approved of the route in Kansas west of the meridian of Fort Riley to the point on the hundredth meridian," under the ninth section of the act of July, 1862.

The map of the Central Branch from Fort Riley to the one hundredth meridian, with the letter accompanying of the treasurer of the company, of the 26th of October, 1871, was transmitted to the President on the 30th of the same month, with the letter of the Secretary above referred to of that date.

On the 27th of February, 1872, by direction of the President, his secretary referred all said letters to the Attorney-General, with the request that he would inform the President whether his approval of the map would be sufficient authority for the company to make the proposed extension under existing laws. The Attorney-General (Williams) indorsed on the papers that, having been of counsel for a claimant adverse to the Central Branch, prior to his appointment, he referred the whole matter to the Solicitor-General. Following this, upon the papers was an indorsement by the then Solicitor General (Bristow) to the effect that for reasons personal to himself, as stated to counsel when the papers were submitted, he was unwilling to express any opinion in the case.

Thus the matter stood until January 10, 1873, when Solicitor-General Phillips gave to the President an opinion that the Central Branch, under the act of 1862, had the right to file a map with a view of constructing that part of the Pacific Railroad between the meridian of Fort Riley and the one hundredth meridian; that this right is confirmed by the said act, in connection with the act of July 2, 1864, and the events which subsequently happened, and that this was not divested by the amendatory act of July 3, 1866.

Soon after this the resolution upon which we are now reporting was passed, and no further step has been taken by any of the Departments.

And now, in the light of this legislation and the action of the Executive Departments, we are to determine, under the resolution of the Senate, whether the Central Branch Union Pacific Railroad Company, is entitled to build a road from its present western terminus, to connect with the main branch of said road at the one hundredth parallel and receive subsidy in lands and bonds therefor. The distance is from two hundred and twenty-five to two hundred and fifty miles; and if the right exists, then follows the obligation of the Government to give lands and bonds to the amount or value of seven or eight millions of dollars. We thus refer to the large amount involved, not because it

should by any means influence the conclusion to be reached, but to show the necessity of greater care and deliberation in appreciating and determining the questions involved. The fact, too, that the rulings of the Departments have not been uniform, as also the further one that several most eminent counsel have in argument controverted the opinion of the late Attorney-General, should, and of course would counsel yet more careful thought in reviewing this record.

Appreciating, as we trust, fully, all these things, let us see, before we proceed, what it is we are to decide; and first, what it is we are *not* to decide. We submit not whether this company made a hard (as they term it) contract; nor yet whether good faith demands that Congress should legislate to relieve them from the position in which they are now placed. It is no part of our duty to inquire whether the company acted wisely or unwisely—upon proper or improper views of the legislation of Congress—whether the Kansas company exercised good or bad faith—whether it would be just or otherwise to now aid the company to make the proposed connection. And hence we dismiss all that is said in the several arguments, and all appeals touching the good faith of the Government, and the hardship to this company if they do not get this subsidy; esteeming them of no possible moment in this inquiry, as questions with which we have nothing to do, except as they may be legitimately considered as tending to throw light upon the intention of Congress.

And in this connection we remark, further, that we give but little heed to the suggestion of counsel that neither the committee nor the Senate should undertake to decide upon their rights, but rather provide for leaving the whole matter to the courts. As the question stands, and under the inquiry submitted, we can conceive of no sufficient reason why, if in our opinion the company is entitled to this subsidy, we should not say so; and if not so entitled, why we should not as explicitly so declare. It has remained, in all reason, long enough a subject for examination and re-examination, for discussion and re-discussion before the Departments, and a theme for comment in the press and forum, to be set at rest by the earliest and most authoritative action. It is not the least of the just complaints against our legislation and system of disposing of the rights of individuals and adjudicating claims that few things are ever conclusively and definitely settled. And while we would be most reluctant to countenance the least invasion by the legislative of the judicial department of the Government, we can conceive of no possible objection to declaring the true intent of an existing statute. This is of almost every-day occurrence. Indeed, we know of no higher duty devolving upon the law-making power—and especially when the rights of the Government are involved—than to prevent, by the speediest action, as far as possible, wrong to the Government or an infringement of the rights of individuals. Congress is supposed to stand indifferent between the individual and the Government; as ready to relieve the one from actual injury or to prevent threatened wrong, as to protect the other against a claim not founded in justice or law. And, therefore, without pretending to exercise judicial functions, it, in virtue of its sovereign and unquestioned power, may most appropriately declare what, in its opinion, are the rights of the Government; what has been granted and what not; and what the rights of those claiming adversely. And this the more readily, since, if such adverse claimant has vested rights, the declaration of the law-maker could not, by possibility, interfere therewith, nor affect in the least his standing before the judicial tribunals.

We repeat, therefore, that, dismissing all question of what ought to

have been the legislation thus far on this subject—as also of what would be right hereafter, and not in the least doubting our right and duty even to prevent action by any department of the Government which we believe to be in conflict with the law—we are remitted to the inquiry, singly and properly, whether this company, under the law, is entitled to locate and build this two hundred and twenty-five or more miles of road and claim subsidy therefor.

For reasons which we will proceed as briefly as possible to state, we feel constrained to answer, most decidedly not. And we are the more justified in consulting brevity in view of the decided current of departmental action, and especially the opinion of the law-officer of the Government, of the 3d June, 1871, which is exceedingly clear in its statements, and to which, in all the arguments, we have found no sufficient answer.

Let us consider some of the difficulties in the way of any other construction. And, first, by the ninth section of the act of July 1, 1862, it is expressly declared that “the route in Kansas, west of the meridian of Fort Riley, to the aforesaid point on the one hundredth meridian of longitude, (is) *to be subject to the approval of the President of the United States, and to be determined by him on actual survey.*” Without this actual survey and approval there was no right to build. True, the company might proceed to survey and build, but without the approval contemplated there would be no right to the lands and bonds. For this provision there were beyond doubt good and sufficient reasons, upon which we need not enter. Indeed if we should even conclude that the provision was quite unnecessary, the fact would remain that the law so speaks, and we have no right to disregard it. And now when it is remembered that there never was an actual survey of this route by any one, (unless by the company setting up the claim which we are now considering, which we shall notice hereafter,) and also that there is no evidence that the President ever approved any such route or survey—we say, when these things are remembered, we can hardly conceive upon what ground the claim for lands and bonds can be predicated.

Until it was thus located and approved, the Central Branch could not complete its road, even to the contemplated junction with the road through Kansas; for nothing can be clearer than that claimant was bound to build, not just one hundred miles west from the Missouri River, but more or less as it might be necessary to make such connection. The one hundred miles was the limit of the subsidy, but not of the length of its line.

Looking for the present, therefore, at the act of 1862, it seems very obvious that until there was such actual survey and approval there could be no point of junction, for, in the language of the thirteenth section of said act, it could not otherwise “connect and unite with the road through Kansas.” It might build ever so many miles of road, whether for the purpose of going directly to the one hundredth meridian on the Union Pacific Road or to a point east thereof, “to connect and unite with the road leading from the western boundary of Iowa,” (section 13, act of 1862,) or to connect with the road through Kansas, (it being conceded that it was contemplated primarily that it should connect with the latter,) and yet, by the very terms of the act, the bonds and lands are to be given *for one hundred miles and no more.* And recurring here for a moment to the sixteenth section of the act of 1864, (and upon which claimant, as we shall see hereafter, mainly relies,) we find that not until it had “completed its road” would it have the right, or be entitled or authorized, to extend and continue the same

in the general direction and route. If it be said that it was contemplated and expected that the route of the road through Kansas would be so located as that it could be struck within one hundred miles west of the Missouri River, the answer is that this, conceded, would not much, if any, advance the argument. It may be admitted as true, and that claimant had good reason to so expect, and yet the fact would remain that it might be so located in strict compliance with the law as to make the point of junction much more than that, and in that event the building of one hundred miles would no more give the right to proceed by reason of the so-called default of the Kansas Company than would the building of ten. So, too, if there never was a line actually surveyed and afterwards approved, so as to present a point of junction, the building of one hundred miles would not be a completion of its road by this company any more than the building of one hundred miles in the direction of the road from the western boundary of Iowa would be such completion. Is it said that it never could have been intended that this road was to be so completely at the mercy or subject to the action or non-action of another company; the sufficient answer is, that it accepted the grant upon the terms so nominated, and, if unfortunate "in having a privilege so beset with difficulties and contingencies, it was, nevertheless, the will of Congress to thus qualify it, as it was of the company to accept it so qualified and restricted." The eastern terminus was therefore definite and well understood. The western was not fixed or named. It depended upon a contingency. It was to be somewhere upon a line to be run or surveyed by another party, which was to be approved by the President. That line never was located—never was approved; there was hence no point of junction, hence no completion, and as a consequence no right to continue in the general direction or route of the defaulting line. For, to here leave this part of the argument, suppose the actual survey had been made, and the President had refused to approve the route, where would the point be to which claimant might build and say its road was completed? Why one point more than another? And why say such point has been reached at just one hundred miles from the Missouri River, any more than this or the other side of such one-hundred-mile stake? In any view, it seems to us clear that it never has, in contemplation of law, completed its road, and hence cannot be entitled to further subsidy in bonds or lands.

Second. But it is insisted that though the road through Kansas never made such actual survey, and never had such executive approval, the Central Branch, upon the default of the Kansas company, did make such actual survey from the meridian of Fort Riley to the one hundredth meridian, and that it is now before the President for his approval. And it is also claimed that it should be approved, the lands withdrawn from market, and the Central Branch permitted to proceed with the construction of the road and take bonds and lands to the same extent in every respect as the Kansas road might or could if it had complied with the law. This presents the substantial and all-important question in this case, and we approach it with the most abiding conviction that it has even less to support it than the one (somewhat more technical) above discussed. Many are the considerations bearing upon it, and we must necessarily dispose of them briefly.

It will be borne in mind that by the ninth section of the act of 1864 the right was given to any company authorized to construct a road from the Missouri River to the initial point, (one hundredth meridian,) to so construct it as to connect with the main line at any point westwardly of such initial point, in case said company deemed such west-

wardly action more practicable or desirable. This, it will be seen, included the road through Kansas, and clearly authorized it to make connection at any point east of the junction of the Union Pacific with the Central Pacific. An important proviso was added, however, that no greater amount of bonds and lands was to be given than if the union had taken place at the one hundredth meridian, as contemplated by the original act. Instead of leaving the matter thus indefinite, the act of 1866 provided that the "road through Kansas," (known as the "Union Pacific Railway Company, eastern division,") should make this connection at a point not more than fifty miles west of Denver, Colorado.

That it was entirely competent to authorize this change, either as contemplated by the act of 1864 or 1866, of course no one can doubt. And especially so in view of the express power given in the act of 1862 (section 18) to "add to, alter, amend, or repeal" said act. We may add, in this connection, the significance of this provision in the act of 1866, when we recur to the right there given to designate the final route at any time before December, 1866, and the renewed provision that it was to have no greater amount in bonds than if it had united with the main line at the one hundredth meridian.

Now, let us see when the only map of survey was filed under which it is or can be claimed the right to build the road to the one hundredth meridian exists. We find it was on the 26th of October, 1871, or more than seven years after the authority was given to change the line to any point westwardly of such initial point, and more than five years after the point of junction was substantially fixed hundreds of miles west of that originally contemplated. Not only so, but the Central Branch finished its own hundred miles in 1869, (December,) more than five years after the first, and three years after the second, act authorizing the change. Then, too, long prior to this, to wit, in July, 1866, the road through Kansas filed a map of general route on the new line. (The map of definite location was filed in February, 1869.) In addition to this, the Secretary of the Interior, as early as March, 1866, made an order restoring the lands to market theretofore withdrawn, from the meridian of Fort Riley to the originally proposed initial point. This remained undisturbed until the claimant asked that the order should be rescinded, when the Secretary, in February, 1869, re-affirmed the previous direction and denied the application.

Now, in view of this plain legislation and undisputed facts, what shadow of foundation can there be for this claim? What was it the Government wanted? Legislating for the people and for their interests, what was primarily contemplated? The answer is, that the road through Kansas should connect with the Union Pacific Road. In other words, that the road starting from the mouth of the Kansas River should at some point unite with the main line; and in aid thereof there was a clearly-defined purpose to aid in bonds and lands, but in no event to a greater amount than if the road had been constructed to the point first designated. Did Congress ever intend to aid the changed line to this amount wherever it might unite, at a point westwardly of the initial point, (say ten, twenty, or fifty miles, more or less,) and duplicate the bounty to another line running parallel therewith to the original point? Was it ever contemplated in authorizing this change that it was keeping alive or transferring this bounty to another company, which was especially limited in aid to one hundred miles, and which, if by possibility entitled to any additional right, must rest it alone upon the claimed *default* of the very company which was *relieved* from its obligation to build on the original line by the very power to which these companies, if they

did not owe their lines, at least owed their right to claim such bounty? And especially can this be believed, when we find that Congress, in the very act which authorized a change of line, provided for aid (in lands) to another company (the Burlington and Missouri) crossing the Missouri River between the road from Atchison and that from the western boundary of Iowa, and connecting with the main line at a point not farther west than said one hundredth meridian? The subsidy to this new line would seem not unreasonably to have been based upon the prospective change of the Kansas road, and the design to still give aid to some road south of Omaha and running to the main line. We say prospective change, because it will scarcely be denied that a change was not only possible but beyond all doubt intended by the new legislation. If not, it was a most idle and useless grant of power.

It is said, however, that by the sixteenth section of the act of 1866 any two or more of the companies engaged in or authorized to build their several roads were empowered to unite or consolidate their organizations, with certain consequent rights and privileges, and that if any one of the companies should not enter into such consolidation it was entitled, upon the completion of its road, "to continue and extend the same under the circumstances and in accordance with the provisions of said section, and to have all the benefits thereof as fully and completely as if it had entered into such consolidated organization." As to the companies so consolidating, the right to continue, upon the part of any company, after completing its own, was dependent upon the failure of the company whose duty it was to build to construct its road as contemplated by the law, and the company so failing was styled a "defaulting company."

It is a question of fair doubt whether the Central Branch was contemplated by this action, or any other than the Union Pacific and Central Pacific lines. Waiving this, however, we shall assume that the Central Branch was included, as well as others, and thus meet the questions presented.

The Central Branch never entered into such consolidation. Nor did it (or the Hannibal and Saint Joseph Company) ever unite with the road through Kansas, as provided by the tenth section of the act of 1862, by filing their assent or otherwise.

The argument, however, is, that being one of the *non-consolidating* companies, and having completed its road, it now has the right, by reason of the default of the road through Kansas, to continue the construction to the one hundredth meridian on the same terms, and under like circumstances, as said Kansas road might or should have done.

One, if not the pivotal element, of this proposition is that the Kansas road was *in default*. This we referred to, somewhat incidentally, above, but the importance given to it by claimant demands more extended remark.

The default evidently contemplated was in not constructing the number of miles in the time required by the statute, (act of 1862, section 10, and 1864, section 5,) to wit, one hundred miles in three years after July 17, 1862, (the time of assent to the act,) and a like number annually thereafter. And as claimant, in this view, could only take benefit from the failure to construct the line between the point of expected or contemplated junction and the one hundredth meridian, and as there is no pretense that there was failure on the part of the Kansas road to build east of that point, we are remitted to the inquiry whether, beyond said point of junction, there was the default meant by the statute upon which the right would ensue to claimant to continue and extend its road.

In other words, was there such failure on the part of the Kansas road as that the Central Branch, on the completion of its road, might extend it to the one hundredth meridian.

If default or failure, it must have resulted from non-compliance with or non-fulfillment of some duty or obligation imposed by the statutes. And it would seem also to logically follow that the default must have been such as that the Government could either insist upon some forfeiture or base thereon the right to enforce some claim or remedy against the defaulting company. This must be so, unless this claimant, by reason of some vested, perfected, or executed right, stands in such an attitude that the Government could not, by a release from the consequences of the supposed default, interfere with the rights so acquired. For, if such rights existed or were acquired, then the action of Congress at this time could not divest them, as in such a case the right would be beyond legislative control. And we may remark in this connection (as pertinent to what has been before said) that, if there was such vested right, the company has for many months had a plain, speedy, and adequate remedy in the courts (by *mandamus*) to enforce the same, and not all the legislation of Congress, at this or any subsequent session, could, of itself, impair such right. For, beyond doubt, the rule is that if Congress shall by statute, *ex moro motu*, give to a citizen property which shall be accepted, it thereby becomes a gift executed, and can no more be reclaimed than if given by an individual under like circumstances. A repeal or change of the statute after the acceptance would not, we need scarcely add, divest the property. It is otherwise, however, where the right is merely executory, not vested, or does not become executed before the repeal, for then it falls with the repeal and cannot be enforced.

Now, what are the facts in this case? Claimant's right to connect so as to get to the main line, in the first instance, depended upon the compliance with the law on the part of the Kansas road. The grant was accepted upon this condition. In this the Government took no other part than to announce the conditions, claimant being entirely free to accept or refuse the same. Coupled with this proposition, and a part of the terms of acceptance, as much so as if written therein at length, was the one that Congress might "add to, alter, amend, or repeal the act" under which the right was claimed. True, this right was reserved "the better to accomplish the object of the act," which was expressed to be "to promote the public interest and welfare," and to secure "to the Government at all times the use and benefits" of said road for postal, military, and other purposes, ("having due regard for the rights of said companies.") But no one will certainly pretend that Congress was not to be the exclusive judge of what would best "accomplish the object of the act." (We thus state the propositions, leaving out of view for the present all question of vested rights.) So, too, it was for Congress to determine whether any proposed action did or did not have due regard to the rights of these companies. This company and all others consented to this as clearly and unquestionably as if the very words of the section from which we have above quoted (act of 1862, section 18) had been written in each of their resolves of acceptance. It was a part and a most important part of the contract. It will not do to say that so long as such subsequent congressional action had, in the estimation of the companies and other persons, "due regard for their rights" it was valid, and when in their opinion it did not it was invalid. The companies consented that Congress should judge of this, and however unwisely or harshly it might judge, while

such judgment might be criticised or complained of as ever so unjust, it could not therefore be held or treated as of no force. In the exercise of this right, Congress, in 1864, authorized the Kansas road to change its line. This the Central Branch knew, and consented by its act of acceptance it might do. This right was again recognized, if possible, more definitely, by the act of 1866. And this the claimant knew and agreed might be done. It will not do to say that the company never expected or anticipated that Congress would thus disregard what appears to be so clearly against their interests. It will not do to say, because this change of line leaves the Central Branch, at the end of one hundred miles, "suspended in mid air, ending nowhere, connecting with nothing," that, therefore, Congress has acted so unjust and unequitable that this company should be allowed to travel on until it joins the main line. Such suggestions, if entitled to any weight, address themselves rather to the law-making power for relief than to your committee, who are called upon to construe the law as they find it, and not to determine what it should have been. If such failure attended claimant's enterprise, (of which we know nothing, and, indeed, with which we have nothing to do,) it resulted not from an unwarranted exercise of power on the part of the Government, but rather from a mistaken confidence in the act of the Kansas Company, connecting therewith, possibly, a faith that Congress could only seek to "promote the public interest and welfare" by leaving intact the lines of road as contemplated by the original act. If in all this they were mistaken, the reflection is that the power to determine otherwise was "nominated in the bond," to which they were doubtless willing and hopeful parties.

But let us here recur to some facts before we state the conclusion of the argument in this part of the case. The Central Branch on the 1st of July, 1866, had, as is claimed, twenty miles of road built, forty graded, and contracts outstanding for the other forty. Two years before this, Congress had authorized the Kansas road to change its line. The Central Branch completed its one hundred miles the 30th of December, 1869—three years after the passage of the act of 1866. The Kansas road filed, in due time, its assent to the provisions of the act of 1864, and also claimed the right under the 9th section to so construct its road as to form a connection with the Union Pacific at a point westwardly of the one hundredth meridian. On the 21st of February, 1866, it presented a map showing a new route west from Fort Riley, known as the Smoky Hill route. The Attorney-General decided that, as three years had elapsed since the taking effect of the act of 1862, the company could not file a map delineating a new line of road, and the request for a withdrawal of lands was refused. The act of 1866 authorized the company to designate the general route, which was filed within the time required, (to wit, July 11, 1866, that of definite location May 8, 1869,) both showing an almost entire departure from the original line west from Fort Riley.

By what authority were these changes made? By that of Congress. The Central Branch had the right to *unite* with the Kansas road, not a franchise therein, upon the failure to build the road. As Secretary Browning says, this implies, it is true, the prosecution by the Kansas company of its work upon the line which was originally contemplated, and perhaps, we might add, adopted by the company. Congress, however, sanctioned a departure with the express saving of the right to bonds and lands upon filing its intended new line. If there was default, it was by consent of the power which could claim and insist upon the consequences of such default, and that, too, at a time when the Central

Branch had a mere or simple right to unite, which might be taken away, and when in no just sense could it be said that there was a vested or executed right. It is, to our minds, a misapprehension of facts and law alike to speak of the failure of the Kansas company to build the road west from Fort Riley as a *default* within the meaning of the statute, when it was released therefrom by the clearly-expressed will and consent of the very power which had imposed the obligations. "A breach of condition or requirement imposed by law is contemplated, involving a forfeiture of some pre-existing right. Such a breach cannot be predicated of an authorized abandonment of a portion of the old line. * * *

* * * The original route from Fort Riley has been vacated by authority of law," and we are utterly unable to see how any company can be entitled to bonds and lands to aid in the construction of a road upon it. If claimant can so construct this road, and is entitled to the subsidy, then, as it seems to us, most clearly, in the face of the legislative will, it would occur that there were two distinct and independent grants of subsidies, both of which would be available, one on the vacated and one on the new line. The act of 1866 did not make a new grant, but simply recognized a continuing right. In the language of the Attorney-General, (Akerman,) the acts of 1864-'66 (and the act of March 3, 1869, in no way conflicts with this view) "authorized this (the Kansas) company to deviate from the route originally contemplated; * * *

* * * the identity of the road in the relation of the Government to it was still preserved." The departure authorized worked no forfeiture of the benefits granted. No duplication or other increase of subsidies was intended. There was nothing for the Central Branch to take except what the Kansas company lost. The latter company lost nothing, and there was hence nothing for the former company to take. But one subsidy was ever granted for building the road, and as there can be no question that the Kansas company is entitled to one, we cannot recognize the right of substitution on the part of the Central Branch.

But this report is already too long, and we must omit further comment. In its support we invoke the unquestioned weight of the decisions of the departmental officers. This is clearly seen by what we have quoted, and it is equally true of others to which we might refer, but which we have not deemed necessary

The attempt found in some of the papers and arguments to show that the question was not understood; that the decisions were based upon a partial presentation of the facts; that the whole matter was regarded as still open; and the claim not finally adjudicated, is without the least support. We doubt whether any question was ever more elaborately argued, or more thoroughly understood, by the Departments. No claimant could possibly be more persistent; none more diligent in effort to obtain favorable action. This very suggestion or argument is itself but further proof thereof, and is attempted to be maintained on part of claimant by taking detached sentences from this order or that opinion, and basing thereon the conclusion above indicated. We need not say that this would be unjust to the Departments, and is without warrant in any fair investigation. We need not discuss how far the opinion of the Attorney-General becomes binding upon the Department asking it. We deem it but proper to say, however, that all suggestions that the opinion of Attorney-General Akerman was not final, or so regarded by him, are unwarranted. It is but too clear that, while he manifested every disposition to give claimant a further hearing, the failure to have it was no fault of his, and that his last act in connection with it abundantly indicated, to use his own language, that "the views expressed re-

mained unchanged." But this we need not discuss, for in our opinion the law is clearly against the right claimed.

To talk about the act of 1866 not repealing the former acts, so far as they relate to this right, is, in our minds, to discuss an immaterial issue, if not to ignore the clear purpose of the statute and well-settled rules of construction. We know that repeals by implication are not favored. This is but the statement of a general proposition. A repeal by implication, however, is just as effectual and complete as if ever so express. This undeniably takes place where the latter statute is repugnant and contrary to the former, though there be no words of express repeal. And it is equally true that the real inquiry in all such cases is, Did the legislation intend to repeal or take away the former law, or was the new statute intended to be merely cumulative? In construing the subsequent act, if it makes a different provision on the same subject, and is incompatible with the former, it is not to be taken as merely explanatory or cumulative, but as an implied repeal of the former act.

These are but brief statements of rules invoked by claimant, readily found in the books, and to support which authorities are not necessary. What have they to do with the question before us? We submit, little, if anything. If the Kansas company was asking the subsidy on the old line, (abandoning the new,) the rules applicable to implied repeals might be invoked. It might then be claimed, (with what plausibility we do not stop to inquire,) that the act of 1866 provided for a new, other, and different line, with new, other, and different subsidies, and the old grant could stand consistently with the new. But claimant never had a grant for the old road. It merely had the (so to speak) inchoate or possible right to unite with the Kansas road, or upon its failure, under certain circumstances, to take its place, and acquire thereby or thereupon certain rights. When Congress said to the Kansas road, "Change your line, you shall have the former subsidy, but change your line," who will say that the old law remained in force so as to give to another company, having a contingent right, the old subsidy in all its original scope and extent.

But admit there was no repeal, which is true to a certain extent, nothing is gained. The right or power to build the Kansas road was continued. The right to change its terminal point west, however, was given. The right to do this was expressly reserved by the original act. After the act of 1866 it might build to the one hundredth meridian or to a point west. It could not build to both, however. And having elected to build, and having actually built to a point hundreds of miles west of that meridian, it cannot on the original line. Nor do we see how the Central Branch can do more, or if it can, how it could get subsidy for more than the first hundred miles from the Missouri River.

And especially so, as it must not be forgotten that claimant takes it, if at all, under a grant from the Government. Shall this be construed most strongly against the Government, so that claimant shall take this entire subsidy, not under an express but an implied grant? The rule certainly is that such a grant is not to inure upon mere implication. The construction is to be in favor of, and not most strongly against, the Government. And hence, for any purpose, any enterprise, any work, be it the most meritorious possible, a subsidy or bounty is not to be implied, nor yet to be presumed, in the absence of an express and unequivocal direction or expression of the legislative will. Any other doctrine would violate all canons of interpretation, all well-settled rules of construction, and the property of the Government would be subject to disposition, not according to the clearly-expressed will of the law-making

power, but the implications of courts and the presumptions of officials, whether judicial or otherwise. If *repeals* by implication are not favored, much more, and, if possible, in a more important sense is it true that *grants and subsidies* by implication are not only not favored, but are and should be disfavored.

And we conclude, therefore, upon any and every possible view of this subject which can fairly be taken, that the "Central Branch Pacific Railroad Company" is not entitled to the claimed aid of bonds and lands for any road it may hereafter construct from its present terminus to the main line; and your committee accordingly report the accompanying bill and recommend its passage.

C

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill H. R. 1956.]

The Committee on Claims, to whom was referred the bill (H. R. 1956) for the relief of Willard Davis, have had the same under consideration, and submit the following report :

The petition and papers ask relief to the amount of \$20,633.10, for the various items therein named, connected with and growing out of petitioner's discharge of the duties of collector in the second and fifth collection-districts of Kentucky, from 1863 to 1866. A report was made from the Committee on Claims in the House of Representatives, which very clearly and correctly sets forth the facts, and it is here incorporated :

Mr. J. B. HAWLEY, from the Committee on Claims, submitted the following report, to accompany bill H. R. 1956 :

The Committee on Claims, to whom was referred the bill (H. R. 751) for the relief of Willard Davis, present the following report :

The claimant, Willard Davis, was, from the 18th day of April, 1863, until the 14th day of October, 1864, collector of internal revenue for the second district of the State of Kentucky. Said district comprised thirty counties and nearly one-third of said State; and said Davis collected therein and paid into the Treasury of the United States the sum of \$175,673.30. Your committee also find that, upon a re-organization of said State into collection-districts, said Davis was internal-revenue collector in the fifth district in said State from October 15, 1864, to April 28, 1866; that said fifth district comprised twenty-nine counties; and that said Davis collected therein \$1,031,754.53. Both of said districts were in the southeast part of said State, and bordered upon Tennessee and Virginia, and during the late war were often overrun by lawless bands of guerrillas; and said collector was often obliged to pack up and remove his official papers belonging to his said office, for the purpose of securing them against loss and destruction. The disturbed and dangerous condition of that section of country during the period of the war while Mr. Davis was acting as collector is fully shown by the testimony of a large number of respectable and intelligent witnesses. Among these is General S. G. Burbridge, who for a long time commanded the Union forces in that State. In his testimony before the committee he states that he assumed command of the Department of Kentucky in the early part of the year 1864, with headquarters at Lexington; that during his administration of the military affairs of the State there were frequent invasions of the eastern and southeastern portions of the State by rebel troops, and guerrilla raids were almost constantly occurring; that he never had at his command sufficient troops to protect the State from such invasions and raids; and that the old second and fifth districts were often overrun by guerrillas and marauders. He states that when he assumed such command he found said Collector Davis at Richmond, in said fifth district, using his best endeavors to collect the internal-revenue taxes due the Government; that said Davis frequently applied to him for troops to enable said collector and his deputies to go to different parts of his district, and that he never was able to comply with the request but on one occasion, for the want of troops; that for miles around Richmond, in said district, and in all the mountainous portions of said district, neither said collector nor his deputies were safe alone; that owing to said disturbed and dangerous condition of the country said collector was obliged to pay extra compensation to his deputies, and was also obliged at great expense, to hire

guards to accompany him and them in their trips to the different parts of the district. General Burbridge further states that he is only surprised to learn that so much of the revenue was collected by said collector in the midst of such constant and great dangers; and that simple justice to said collector requires that the Government should not only relieve him from any uncollected taxes charged against him, "but that he should be re-imbursed for moneys paid out, and have, in addition, reasonable compensation for his services so well and faithfully performed at a time when there was no law or protection in his district."

Said collector claims in his petition the sum of \$20,633.10 as a proper allowance to be made to him by Congress in the settlement of his accounts with the Internal-Revenue Department. The committee have rejected all the said claim except the following:

He claims \$150, taken from his deputy by guerrillas.

For money paid out in the employment of necessary guards to enable him and his deputies to discharge the duties of their respective offices, \$1,500.

For uncollected taxes, charged against him in the Internal-Revenue Department, the lists for which were destroyed by guerrillas, without any fault upon the part of said collector, the sum of \$7,613.33.

For additional compensation as collector in said second and fifth districts, \$8,000.

For expenses necessarily incurred in sending a messenger to the assessor's office, distant one hundred and fifty miles, \$75.

The Commissioner of Internal Revenue, in a letter addressed to the chairman of this committee, referring to the item in reference to the destruction of the collection-list, says: "Referring to your letter of the 31st instant relative to item ten in the claim for relief of Willard Davis, late collector second and fifth districts of Kentucky, I have the honor to say that this office is satisfied that he should receive credit for the \$7,613.33 referred to therein, being amount of taxes unaccounted for, covered by lists alleged to have been destroyed by rebel raiders." It also appears in proof by several witnesses that the guerrillas got possession of the papers and lists of said collector and destroyed them.

In a letter of the Commissioner of Internal Revenue, addressed to the committee, in reference to the item for compensation, that officer says: "This office cannot approve this item for the full amount thereof, but does indorse it to the amount of \$5,000, as that sum, added to the amounts credited and allowed him, will insure to Collector Davis a net compensation of about \$5,000 per annum, not an excessive amount, when due consideration is given to the hardships and difficulties incident to the discharge of the duties of the collector, at a time when his district was infested with guerrillas and other lawless persons, who rendered the transaction of all business by agents of the United States, in its behalf, a matter of great personal peril, and also rendered it necessary to incur many expenses which could not be considered by the Department as a legal credit to the collector.

"Mr. Davis was considered to be an honest and efficient officer, who, by misfortune resulting from the peculiar situation of affairs referred to above rather than from any fault or lack of diligence on his part, became involved in his accounts with the Government, and he is believed to be entitled to generous treatment by Congress."

The first and last items above mentioned are fully sustained by the evidence before the committee; and the committee are of opinion that the charge of \$1,500 is, under all the circumstances, reasonable and just. The evidence in this case is very voluminous, and shows beyond question that the said collector was an honest, capable, and faithful officer.

In view of all the facts, your committee recommend that said collector be allowed the sum of \$14,338.33, and for that purpose recommend the passage of the accompanying substitute for said bill.

In addition to this we only add that the Commissioner of Internal Revenue, in answer to a letter addressed to him by your committee, under date of the 4th instant, says "that the bill reported by the Committee on Claims of the House of Representatives, (H. R. 1956,) authorizing the accounting officers of the Treasury to credit the account of the late Collector Davis the sum of \$14,338.33, is considered by this office a just and proper allowance."

This is the amount allowed by the bill as it passed the House. In the opinion of your committee, this is not in excess of that warranted by the evidence, and they therefore report said bill back and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1874.—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

REPORT:

[To accompany bill H. R. 259.]

The Committee on Post-Offices and Post-Roads, to whom was referred bill H. R. 259, having had the same under consideration, report as follows:

It appears from accompanying affidavits of James W. Glover, postmaster, Whitman R. Mowry, assistant postmaster, and Elihu Cooley, an old resident of Oxford, N. Y., that on the night of April 16, 1873, the post-office at Oxford was broken open by burglars, and that the iron safe in said office had been forced open by means of powder, bar, drills, wedges, and other burglar's tools, and that all the money, postage-stamps, and other valuables therein had been carried away. And it further appears, from the affidavits of said Glover and Mowry, that it had been their custom to keep all the money, postage-stamps, and other valuables belonging to said office locked up in said safe during both day and night, except a small amount which, for convenience, was kept in drawers during the day. And it further appears that on the night of the 16th day of April, 1873, all the money and postage-stamps belonging to said office had been placed in said safe and locked up, except perhaps the amount of less than fifty cents, which might have been left in the drawers. It further appears, from the affidavit of said Glover, that the amount of postage-stamps placed in the said safe and locked up, on the night of the 16th of April, 1873, was about \$498.39, and money belonging to said post-office to the amount of \$30.05; all of which, together with money and valuables belonging to said Glover, Mowry, and others, was stolen and carried away, and no part thereof has been recovered.

And it further appears from a copy of a letter addressed to the Postmaster-General, on June 16, 1873, by E. H. Prindle, late member of Congress, and a petition, also addressed to the Postmaster-General, on June 20, 1873, and signed by fifteen of the leading citizens of Oxford, that the robbery was in no wise the result of negligence on the part of the said Glover or his subordinates.

It also appears from copies of letters inclosed in a letter of the Third Assistant Postmaster-General of February 10, 1874, that said Glover wrote to the Department, notifying them of the robbery, on the 17th of April, 1873. The Third Assistant Postmaster-General, in the same letter, estimates the probable amount of stamps in the Oxford post-office April 16, 1873, at \$527.25, which differs but slightly from the amount claimed by said Glover, who estimates, from his accounts, postage-stamps on hand \$498.39; cash belonging to office, \$30.05; total, \$528.44.

In view of the facts as submitted, your committee recommend the passage of the bill for relief for the amount of stamps so stolen.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1874.—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

R E P O R T :

[To accompany bill S. 595.]

The Committee on Post-Offices and Post-Roads, to whom was referred the petition of Benjamin Cooley and James W. Boswell, respectfully submit the following report :

It appears that Benjamin Cooley was the contractor to carry the mails of the United States on post-route No. 3293, from Washington City, D. C., to Rockville, Maryland, a distance of sixteen miles, from July 1, 1860, to June 30, 1864.

Also, that James W. Boswell was the contractor for carrying the mails of the United States during the same time on post-route No. 3304, from Rockville to Poolesville, in said State, also a distance of sixteen miles, so that the two routes 3293 and 3304 make a continuous line of thirty-two miles from Washington to Poolesville.

A communication from the Hon. George W. McLellan, Second Assistant Postmaster-General, shows that the contract on route 3293 was for six trips per week, at \$300 per annum, and on route 3304 three trips per week for the same compensation. At the time the contract was made the mail was very light, averaging from thirty to fifty pounds per trip, and judging from the previous amount of mail-matter going over said routes, there was no reason to anticipate any large increase in the mail ; but about the 1st of July, 1861, a large force of United States troops was quartered around Poolesville and the mail-matter increased to some eight or nine hundred pounds per trip, requiring the contractors to use a two-horse wagon for a large portion of the time, instead of carrying the mail on horseback, as it had theretofore been done. By the terms of the contract they were required to carry all the mail-matter on the routes, and no mode of conveyance was specified. This sudden increase could not have been anticipated nor considered when the contracts were made.

The evidence shows that, notwithstanding the fact that both these contractors sustained heavy losses by carrying the mails, they both faithfully fulfilled their obligations to the expiration of their contract terms.

One of the contractors petitioned the Postmaster-General, in February, 1862, for additional pay, on account of this unexpected increase of mail-matter, which could not be granted, as the law prohibits the allowance of additional compensation to contractors, except when additional trips or extension of routes had, subsequently to date of contract, been ordered, and in such cases only pro rata pay could be allowed.

Your committee, in view of the circumstances and service rendered, report in favor of the prayer of the petitioners and submit a bill therefor, the passage of which they recommend.

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IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

R E P O R T:

[To accompany bill S. 596.]

The Committee on Claims, to whom were referred the petition and accompanying papers of H. W. Read, praying compensation for superintending the transportation of money belonging to the United States from Saint Louis to Santa Fé, have had the same under consideration and make the following report :

It appears that petitioner was charged by the Treasurer of the United States with the custody of \$200,000 currency at Saint Louis, Missouri, some time during the year 1863, and directed to superintend the transportation of the same to the United States depository at Santa Fé, in New Mexico ; it appears that such service was faithfully performed ; that it was attended with some danger, and required extraordinary vigilance and care. It further appears that the petitioner has not been paid for such service ; that he had been a clerk in the Treasury Department before he undertook the same ; that he resigned such clerkship with a view to go to the West as postmaster at Tucson ; that he applied to the Treasury Department for compensation, and was advised that he must apply to Congress for relief.

Upon consideration the committee are of opinion that some compensation should be allowed to the petitioner, and fix the same at the sum of one thousand dollars ; and they report the accompanying bill, and recommend that the same be passed.

THE HISTORY OF THE

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REPORT

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IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

[To accompany bill S. 597.]

The Committee on Claims, to whom were referred the petition and accompanying papers of William A. Griffin, have had the same under consideration, and ask leave to report :

That said petition and papers were before the Fortieth Congress, at the second session thereof, and the Committee on Claims then considered the same and made a report, which embodies the facts as they appear to this committee; they therefore adopt the same, (Senate Report Com. No. 186, Fortieth Congress, second session,) and make it part of this report. The committee report the accompanying bill, and recommend that the same be passed.

IN THE SENATE OF THE UNITED STATES

REPORT

OF THE

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE, MARCH 10, 1874, RELATIVE TO THE LANDS BELONGING TO THE UNITED STATES.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT :

The Committee on Claims, to whom was referred the petition of Sarah F Stapler, made on behalf of the heirs of John Ross, deceased, late chief of the Cherokee tribe of Indians, praying compensation for property destroyed by the rebels during the late war, submit the following report :

This case was before this committee during the second session of the Forty-first Congress, and was fully considered at that time. The memorialists at that time were Annie B. Ross, daughter and executrix, and William P. Ross, successor to and executor of the said John Ross. The claim then was the same as now. The old memorial and evidence are refiled and no new evidence is furnished. A report (No. 113) made by the committee to the Senate on the 20th April, 1870, and ordered to be printed, is before us. On the coming in of that report the memorial was indefinitely postponed and the committee discharged from its further consideration. Under these circumstances the committee decline to open the case unless some ground is furnished either by presentation of new evidence or a successful impeachment of the previous report on its findings or conclusions.

We ask to be discharged.

THE SECRETARY OF THE INTERIOR
WASHINGTON, D. C.
JANUARY 1, 1892

ANNUAL REPORT OF THE SECRETARY OF THE INTERIOR

FOR THE YEAR 1891

AS PREPARED BY THE SECRETARY

REPORT

The Secretary of the Interior has the honor to acknowledge the receipt of the report of the Commissioner of the General Land Office, and to transmit herewith the same to the Senate and House of Representatives.

This report was prepared by the Commissioner of the General Land Office, and was submitted to the Senate and House of Representatives on the 1st day of January, 1892. The report contains a full and complete statement of the work of the General Land Office during the year 1891, and also a statement of the work of the Office during the year 1890. The report is divided into two parts, the first part containing a statement of the work of the Office during the year 1891, and the second part containing a statement of the work of the Office during the year 1890. The report is a valuable document, and it is hoped that it will be of great service to the Senate and House of Representatives.

Very respectfully,
The Secretary of the Interior.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Claims, to whom was referred the memorial of Samuel Jamison, of New Orleans, La., praying compensation for the use of his property by the United States, submit the following report :

The property for the use of which by the United States, from July, 1862, to October, 1865, claim is made, is situate in the city of New Orleans, and is thus described in the memorial :

Two houses and lots, Nos. 99 and 100, situated on Dryades street; one vacant lot, same street, between Erato and Clio streets; building and lots, No. 30 Perdido street; Nos. 65, 67, and 69 Carondelet street; store-house and lot, No. 44 Carondelet street; house and lots, 32, 34, and 36 Carondelet street; one-half house and lot, No. 92 Common street; one house and lot, No. 256 Pensacola landing; one house and lot, No. 109 North Levee, and 91 Fulton street; house and lot, No. 248 Barronne street; house and lot, No. 164 Barronne street; building and lot on Triton Walk.

The same property is described in what purports to be an official copy of an order made on the 14th of October, 1865, by Thomas W. Conway, acting commissioner Bureau Refugees, Freedmen and Abandoned Lands, wherein it is recited that the property was then held by the Bureau, having been turned over to the same by Hon. B. F. Flanders, supervising special agent United States Treasury, and that Samuel Jamison had exhibited proof of title by which he acquired said property by purchase, and had filed in that office his oath of allegiance and an affidavit of ownership in his own right of the property, and that other evidence had been submitted that the property was not liable to confiscation, and wherein after said recitals it was ordered that the said property should be released to the said Jamison upon his releasing the Government of the United States, and all and any officers and agents thereof, from any claim or claims which might be brought against it or them on account of any matter or thing growing out of the seizure aforesaid.

The release was to be subject to the order of General Howard, the Commissioner of the Bureau.

On the 13th of April, 1867, Thomas Murray and William Cooling made an estimate, under oath, of the monthly rental value of these different pieces of property, basing their assessment upon the rents which the different properties described then brought, and the monthly total was \$3,734.98.

One C. Beach, sr., on the 15th of October, 1866, made oath that these pieces of property, or most of them, were seized and taken possession of by the United States authorities in August and September, 1862, and

that they were used for the purposes of the United States, or rented out by the officers of the United States, and the rents by them collected and received from date of seizure until October, 1865.

David Jamison, on the 13th of April, 1867, made oath that he was the agent of Samuel Jamison, and in the actual possession of these houses and lots, when, between the months of June and September, 1862, they were seized by General Butler, commanding the Department of the Gulf, the houses containing at the time the usual amount of furniture, a large amount of silver-ware, and other articles of value; that upon the restoration of the property to the owner on the 31st of October, 1865, the loss upon the furniture was \$6,500; the loss upon the silver-ware was \$750; the loss upon miscellaneous articles \$18,150; the injury to houses, \$17,000; aggregating Mr. Jamison's loss \$42,400.

W. B. Armstrong, who describes himself as captain and assistant quartermaster of this Bureau, made a certificate at the headquarters of the Bureau on the 3d of April, 1867, that the properties above described were under seizure by the United States Government, and in charge of its agents from the 20th day of August, 1863, to the 14th day of October, 1865.

On the 18th day of January, 1868, the memorialist made oath that he had never presented his claim for indemnification for these losses to any persons, for the reason that he never knew that a board had been organized in New Orleans for the adjudication of such matters.

On the same day, the memorialist made oath that his claim for these various losses originated in his own right; that they were still his, never having been transferred by him or any assurance given that the amount recovered would go into any other hands than his own.

On the 21st of December, 1872, the same Captain Armstrong, above mentioned as having been assistant quartermaster of the Bureau located at New Orleans, made oath that in the month of April, 1867, he made a personal examination of the records of the office and found that the properties above described belonging to memorialist were held by the United States Government and in charge of its agents from the 20th day of August, 1863, to the 14th day of October, 1865, and that he considered \$3,734.98 as a fair and reasonable monthly rental for the property for the time it was held by the United States.

Rollin Church, of New Orleans, on the 2d day of April, 1873, made oath that he knew Mr. Jamison was the owner of a large amount of real estate in that city, and, without describing it, says he has no hesitation in expressing the opinion that the sum of \$3,734.98 was a fair and reasonable monthly rental between July 1, 1862, and the 14th of October, 1865.

Several witnesses testify to the loyalty of Mr. Jamison, and refer to his spoken sentiments against secession, and his adhesion to the cause and Government of the United States during the rebellion. None of them speak of any specific deeds done in manifestation of his loyalty, nor is any account given of where he was and what he was doing at the time of the seizure and occupation of his property. But on the 19th of June, 1865, he took an oath that he would thenceforth defend the Constitution of the United States and the union of the States thereunder, and that he would abide by and support all laws and proclamations which had been made with reference to the emancipation of slaves. And at a still earlier day—May 29, 1865—it is certified by the clerk of the United States circuit court, eastern district of Louisiana, that Mr. Jamison had on that day taken and subscribed the oath prescribed by the President's proclamation of December 8, 1863.

A commission is also shown, signed by the acting mayor of New Orleans, dated October 4, 1865, showing that he had been duly appointed street commissioner of that city.

Mr. Jamison, himself, makes oath, on the 31st day of January, 1873, long after instituting his claim for compensation, that he did not serve in the confederate army or navy, either as an officer, soldier, or sailor, or in any other capacity at any time during the rebellion; that he never furnished any stores, supplies, or other material aid to the confederate army or navy, or to the confederate government, or to any officer or department of the same in support thereof, and that he never accepted or exercised the functions of any office whatsoever under or yielded any support or encouragement to that government, but, on the contrary, that he was thoroughly loyal to the Government of the United States before, during, and since the rebellion.

We have been thus particular in setting forth Mr. Jamison's affidavit, because he had the whole field to himself; was not subject to cross-examination, and manifested much ability in setting forth specifically a great many things which he had *not* done; and to express our disappointment that this witness, who was so capable of doing it, had not set forth with equal particularity what things he *had* done in manifestation of his loyalty and in proof of his hearty support of the United States Government. He does not volunteer to tell Congress where he was, or what he was doing during the eventful struggle. If he was doing nothing to aid the enemies of the Government, what was he doing for its friends? With such ample and inviting opportunity as he had to speak of positive as well as negative action, we must esteem it a mark of suspicion that he omits wholly all allusion to facts which go to support his claim to having been "thoroughly loyal."

The committee, in further comment upon the case made by the papers, cannot withhold the expression of their surprise that four different men, speaking at different times upon the rental value of property widely scattered over the city of New Orleans, and embracing so many particulars, should agree, to a cent, as to its valuation. Murray, Cooling, Church, and Armstrong all swear that it was worth, not about this sum or that, but just \$3,734.98 per month. As Murray and Cooling made a joint affidavit, we can imagine they may have compared and compromised their views, and agreed upon a specific sum; but what should we say of Armstrong and Church, who made separate affidavits at different times, and without conference with each other or with Murray and Cooling? We feel bound to say that such consistency of estimates, made by different minds at different times, is not conducive to the witness's credit, but is calculated to excite suspicion of conference and collusion. If we accept them as true, then the rental value of the property seized was \$44,819.76 per year, and the claim against the Government would amount to over \$100,000 for the use of the property.

The Secretary of War was appealed to for information. He informs the committee that the Quartermaster-General reports that "the only information in possession of his office relative to the property is that set forth in the returns of Captains Constable, White, and Bradshaw, who took up a building on Triton Walk, New Orleans, used as a stable; and property numbered 32, 34, 36, 44, and 67 Carondelet street, New Orleans, used as offices; and 109 New Levee street, used as ordnance shop from January 7 to March, 1865, after which no trace thereof can be found on the records, and no mention is made as to owner, rate of rent, condition of property, or what sum, if any, remains due and unpaid."

In the opinion of the committee, the memorialist does not establish sufficiently, by the proof he exhibits—

1st. The particular use made by the United States or its agents of the property in question.

2d. Nor furnish the names of the officers or agents using it, so as to enable us to verify or correct the statements.

3d. Nor sufficiently show when each piece of property was seized.

4th. Nor how much it was rented for, nor how much rent was collected by the officers or agents in charge.

5th. Nor the names of the tenants or occupants of each piece of property.

6th. Nor the specific injury done to it.

7th. Nor the amount paid, if anything, to Samuel Jamison or his agent.

8th. Nor show how it happened that David Jamison was in possession and Samuel Jamison absent when the property was seized, and why no complaint during these long months was made by the memorialist of the injustice done him as a "thoroughly loyal" man.

It is evident from these suggestions that the case is not in condition, from the proofs, to allow us to recommend the payment to Mr. Jamison of any specific sum at this time. Should we be of opinion he ought to be paid something, we must be satisfied what the property yielded in rent to the United States, if its officers undertook to lease it, and what the full value of the rent was, as to so much as was actually occupied and used by the United States, and we should further have to estimate the difference in the value of the paper money then and now.

But there is one view of the case yet remaining to be taken. The memorialist produces an order releasing to him the possession of this property. By virtue of that order he came into possession. He submitted to the condition that he would release the United States and its officers from all claim to compensation for the use of his property as a means of recovering its possession. He *has* released them. If he protested against the release at the time, he does not say so. But without some explanation, showing why he ought not to be bound by it, we must hold that release binding upon him now.

The committee ask to be discharged from the further consideration of the memorial.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

[To accompany bill S. 243.]

The Committee on Claims, to whom were referred the bill (S. 243) for the relief of Charles W. Denton, of Oregon, and the accompanying papers, have had the same under consideration, and make the following report:

That the petitioner alleges that, in the year 1854, he owned a land-claim in the county of Wasco, in the State of Oregon, under the act of Congress entitled "An act to create the office of surveyor-general of the public lands of Oregon, and to provide for the survey, and to make donations to settlers of the public lands," approved September 27, A. D. 1850; that during the months of September and October, A. D. 1854, one Sergeant Dougherty, of the United States Army, placed upon the said land-claim a large number of Indians, and they were kept on the same until the year 1860, when they were removed, &c.; that the said Indians cut and destroyed much of the timber on said land-claim, and prevented the petitioner from using the land, timber, &c.; and for such injuries he claims damages.

The committee are of opinion that it does not appear sufficiently that the petitioner had matured his title to said land, and the evidence he submits in support of his claim is too indefinite to warrant any allowance for such damages as he claims. Indeed, it does not reasonably appear what, if any, damages he sustained. His claim appears to rest mainly on speculative and remote grounds.

The committee, therefore, report back S. bill 243, being "A bill for the relief of Charles W. Denton, of Oregon," and recommend that the same do not pass.

THE STATE OF TEXAS

IN SENATE,
January 10, 1877.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE,
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE,
JANUARY 10, 1877.

The Commissioners of the Land Office have the honor to acknowledge the receipt of a resolution of the Senate, passed on January 10, 1877, relative to the sale of the public lands. The same has been carefully considered, and the following report is submitted in response thereto.

The public lands of this State are situated in various parts of the same, and are of various kinds and qualities. Some are in the hands of private individuals, and some are in the hands of the State. The same are of various kinds and qualities, and are of various values.

The Commissioners of the Land Office have the honor to acknowledge the receipt of a resolution of the Senate, passed on January 10, 1877, relative to the sale of the public lands. The same has been carefully considered, and the following report is submitted in response thereto.

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

R E P O R T :

[To accompany bill S. 414.]

The Committee on Pensions, to whom was referred the bill (S. 414) granting a pension to Alice Mullally, have had the same under consideration, and make the following report :

Claimant is the mother of John Mullally, late a private in Company C, Second Regiment Wisconsin Cavalry Volunteers, who entered the service on the 17th of June, 1864, and died in hospital at Vicksburgh, Miss., October 13, 1864. The proof as to enlistment, service, and death of the soldier is full. The only question to be considered is the alleged dependence of the claimant upon her son for support at the time he enlisted, and before that date. She testifies that her husband died in 1857, in Ireland, where they resided; that she had no property or means of support except from her own earnings and the labor of her son John; that she had three other children, but none of them contributed anything toward her support; that her son John sent her \$220 from America out of his earnings from labor and local and Government bounties, after his enlistment in the Army. This testimony is corroborated by Michael Mullally, the brother-in-law of the claimant, who forwarded to her address in Ireland the larger portion of the money at different times.

Michael Piesley testifies, on the 19th of September, 1871, that he was then twenty-three years old, and had known claimant and her husband, as also her son John, for many years; that the latter died unmarried, and was the sole dependence of claimant for support; that he supported her before his enlistment by manual labor, and afterward by his monthly wages as a soldier in the Army. This is all the testimony bearing on the point at issue, and it was judged insufficient by the Commissioner of Pensions, because it was not shown that the son had contributed to his mother's support before his emigration to this country. Claimant was called upon by the Commissioner to produce the letters covering the several remittances to her from the witness Michael Mullally and others, and proof of her dependence upon and contributions from her son John, with dates and amounts, prior to his emigration to this country; and also the testimony of the party or parties with whom she exchanged the "greenbacks" remitted to her for coin. Claimant failed to produce the letters or other evidence required, alleging that the party with whom the "greenbacks" were exchanged

had since died; and that she could not produce the letters in which the money was sent, because being unable to read and write, the correspondence was conducted through a neighbor, with whom all letters, receipts, &c., were left, and have never been returned. Claimant states that her son John contributed to her support for about six years before he left Ireland, at which time he was under twenty years of age; that he worked out as a hired laborer, before his emigration to this country, at thirty shillings a year, which was contributed toward her support, except what was necessary for his own expenses. But she produces no certificate from the parties to whom the boy was hired as to how and to whom the wages were paid.

Allowing full credit to the testimony of Michael Mullally, who is the principal witness, in fact the only one whose testimony is of much value, still it is not shown that claimant was dependent upon her son John prior to and at the date of his emigration to this country; and when the relationship of the witness to claimant is considered, coupled with her inability to produce any evidence from persons among whom she lived in Ireland touching her dependent condition, or any of the letters from witness or others inclosing money from this country to her, or the certificate of those having charge of the books of the merchant to whom she sold the "greenbacks," in which the several remittances were alleged to have been made, one may hesitate to accord full faith to the accuracy of the statements. Besides, there are discrepancies in the respective statements of the claimant and the witnesses, which claimant does not reconcile, but only excuses herself by alleging her inability to write, or keep account of the several amounts received, or the dates.

Michael Piesley's testimony is vague and general, as one might expect when his age and the dates referred to by him are considered. He was only sixteen years old when John Mullally died, and only nine at the death of claimant's husband in 1857, of which he speaks. He could not be expected to know much of the condition of claimant, at any rate, until nearly the date of the said John's leaving Ireland; and witness does not state where he himself was at the time, whether in this country or Ireland.

Inasmuch as claimant had drawn from the earnings of her son John less than thirty shillings a year while he remained in Ireland, if anything at all, and had received no assistance from one of her other children, and as her son John had died some four years before she came out to this country, it is apparent enough that she came solely for the purpose of prosecuting her claim to a pension from the Government. She is now old and doubtless needs help to procure the comforts of life. But to entitle her to the relief asked, it should be plainly shown that she had been supported by her deceased son while he lived, and at the same time the reason why she has not a like claim for support upon her other children.

The committee concur with the Commissioner of Pensions in the opinion that the testimony is insufficient in the matter of dependence alleged, and ask to be discharged from the further consideration of the bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Claims, to whom was referred the memorial of the Rock River Canal Company, praying Congress to construe the resolution for the relief of the State of Wisconsin, passed July 1, 1864, having had the same, with the accompanying papers, under consideration, submit the following report :

On the 18th of June, 1838, Congress granted to the Territory of Wisconsin, for the purpose of aiding in opening a canal to unite the waters of Lake Michigan, at Milwaukee, with those of Rock River, all the land not before that otherwise appropriated or disposed of, in those sections and fractional sections which were numbered with odd numbers on the plats of the public surveys within the breadth of five full sections, taken in north and south or east and west lines on each side of the main route of said canal, from one end thereof to the other, and reserving the even-numbered sections and fractional sections; and the land so granted was to be subject to the disposal of the legislature of the Territory for the purpose aforesaid, and no other. The canal and its branches, when completed, were to be a public highway for the use of the Government of the United States, free from toll, &c.; and it was provided "that said main canal shall be commenced within three years, and completed in ten years, or the United States shall be entitled to receive the amount for which any of said land may have been previously sold; and that the title to purchasers under the Territory shall be valid."

The second section authorized the disposition of these lands by the legislature of the Territory, or of the State to succeed it, at not less than \$2.50 per acre, and a fee-simple title to be given to the purchaser.

The 5th section provided that whenever the Territory should become a State, such part of the granted lands as remained unsold should vest in the State, to be disposed of by its legislature, and the proceeds applied to the construction of the canal, or such part thereof as had not been completed, and the State was to be entitled to hold, by virtue of said grant, as many shares of the stock of said canal as should be equivalent to the aggregate of all the sums of money arising from the net proceeds of the sales of the lands and applied to the construction of the canal, and to be entitled to dividends like any other stockholder. In the event that the State made no other adequate provision for purchasing the residue of the stock of the canal, the dividends arising upon the State stock, together with the proceeds of the sales of the granted lands, were to constitute a fund, and be applied to the extinguishment of the claims of the other stockholders, until the entire stock vested in

the canal should be acquired by the State, after which and after the State should be re-imbursed for all expenses incurred out of her own proper funds in the construction and repairs of the canal, no other tolls were to be levied than such as were necessary to keep the canal and works in good repair and pay the expense of the superintendence and the collection of tolls.

The 6th section provided that the State should be held responsible to the United States, and for the payment into its Treasury of all the moneys received from the sale of the granted lands, at not less than \$2.50 per acre, if the main canal should not be commenced within three years and completed within ten years, pursuant to the charter of said company.

The 8th section provided that for the purpose of expediting the construction of the canal, and to secure a better price for the lands embraced in the grant, the territorial legislature might borrow money upon a pledge of the lands, to such an extent as it deemed expedient, and defer the sale of the lands. For the moneys so borrowed and applied to building the canal, the State was to be entitled to such interest in the stock of the canal as should be equivalent thereto in amount.

The 9th section gave the assent of Congress to the act incorporating said canal company, subject to certain modifications not necessary to be stated.

And this brings us to consider the charter granted to this company by the council and house of representatives of the Territory of Wisconsin on the 5th day of January, 1838, a few months previous to the land-grant by Congress just described, which, it will be remembered, was made on the 18th of June, 1838. The company was authorized to construct the before-mentioned canal, navigable feeders, and a branch canal, to take private property, and borrow money. The work was to be commenced within three years, or the company should forfeit its franchises; and all parts of the work not completed within ten years were to be forfeited to the State.

The 23d section provided that the future State of Wisconsin might, after its admission into the Union, at any time purchase the canal and hold it for the use of the State, by paying to the corporation the amount actually expended in the construction and repairs of the same, together with interest, &c. If Congress granted any subsidy in aid of the work, in land or money, the right of the same was to vest in the State whenever the transfer of the canal should be made, and the net proceeds of all sales of the donated lands was to be deducted from the amount to be paid to the corporation for the transfer of the work to the State. Further, the corporation was authorized by the charter to apply to Congress for such a subsidy.

On the 26th of February, 1839, the territorial legislature of Wisconsin provided for the appointment of the necessary officers, and for the management and sale of these donated lands, and for the payment of the proceeds upon the work as it progressed.

On the 17th of February, 1842, the same legislature by resolution declared that all connection between the Territory and the canal ought to be dissolved, and the work on the canal to be abandoned, and that the Territory ought not further to proceed in the execution of the office of trustee imposed by the land-grant, and closed by praying Congress to grant these same lands to the Territory for purposes of internal improvement, and if Congress should refuse to so alter the grant, then that the act of June 5, 1838, should be unconditionally repealed.

When this resolution was presented to Congress, it was referred to

the Committee on Public Lands in the House of Representatives, which called forth a very able report on the 10th of May, 1842. From that it seems that the canal company earnestly protested against the repeal of the act and the revocation of the grant, on the ground that it would be inconsistent with good faith, and in violation of vested rights. They reported a resolution that Congress ought not to interfere with the act of cession without the consent of the company.

Congress declined to repeal or modify the act making the grant.

On the 3d of February, 1846, the territorial legislature resolved that the receiver of the canal-lands should pay over to the treasurer of the Territory all moneys to arise from the sale of the canal-lands, except the expenses of the sale; that the moneys thus received should be used in the payment of all debts due from the territory, like any other moneys in the treasury, and might be applied to the payment of the expenses of the convention to be held that year, to form a constitution for the State of Wisconsin, and pledged the faith of the Territory and of the future State for the repayment to the canal-fund of the sum which should be diverted in consequence of that resolution to the aforesaid purposes, whenever the same should be required to be repaid for the purpose of executing the trust created by Congress in making the land-grant.

The convention which met for the formation of a constitution adopted a resolution on February 1, 1848, requesting Congress, when Wisconsin applied for admission as a State, so to alter the terms of the land-grant above stated that the same odd-numbered sections granted, and remaining unsold, might be held and disposed of by the State as part of the 500,000 acres of land to which the State would be entitled under the act of 4th of September, 1841; and a further resolution that these lands and the five per cent. of the net proceeds of the public lands lying within the State to which she would be entitled under the enabling act of August 6, 1846, should be granted to the State, not for purposes of internal improvement, *but for the use of schools.*

To these resolutions of the constitutional convention Congress gave its assent in the act of May 29, 1848, with this proviso, that the liabilities incurred by the territorial government of Wisconsin, under the terms of the land-grant above quoted, should be paid and discharged by the State of Wisconsin.

Subsequently to the admission of Wisconsin as a State into the Union the legislature abrogated the system by which the canal-land had, in part, been sold, and provided for the sale of the remainder for the use of schools, in accordance with the policy of the Territory.

We now come to the final action of Congress in this complicated matter. On the first day of July, 1864, the following resolution was adopted:

"A resolution for the relief of the State of Wisconsin.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Department of the Interior shall, in adjusting the amount due to the State of Wisconsin, under existing laws, as five per centum of the net proceeds of sales of the public lands within her limits, estimate and charge against her the value of one hundred and twenty-five thousand four hundred and thirty-one and eighty-two one-hundredths acres of land, granted to the Territory of Wisconsin to aid in the construction of the Milwaukee and Rock River Canal, which have been sold by said Territory or said State at one dollar and twenty-five cents per acre, and as much more as the Territory and State received upon the same upon the sales of any part thereof at a higher price, and shall credit said State

with the amount that has been legally and properly applied by said State or Territory toward the cost of selling said land and toward the construction of said canal. And the said Secretary shall also settle and allow to the Milwaukee and Rock River Canal Company such sums of money as have been properly expended by said company in the survey and location of said canal, in the construction thereof as far as the same has been constructed, together with dams, locks, and slack-water navigation, and in the management and keeping of the same in repair; and the same shall be paid to the said canal company out of any money in the Treasury not otherwise appropriated, not exceeding in amount, however, the balance charged against the State of Wisconsin upon the sales of said canal-lands, as above required, after deducting the sum allowed said State for money paid by her out of the same fund; the same to be received by said canal company in full payment and satisfaction of all claims of said company against the State of Wisconsin and of the United States on account of said canal-land grant, or on account of any action of the Territory or State of Wisconsin or of the United States in relation thereto.

"SEC. 2. *And be it further resolved*, That the Commissioner of the General Land-Office be, and he is hereby, appointed commissioner to adjust the accounts herein provided for, under the supervision of the Secretary of the Interior, and to determine what sum shall be charged to said State of Wisconsin for the lands granted for the construction of said canal, and what sums shall be credited respectively to said State and said company for the moneys expended by them in the construction of said locks and canal as herein provided.

"Approved July 1, 1864."

What was done in pursuance of this resolution will sufficiently appear in the memorial of the canal company, which presents the facts and the grounds on which the company seek the intervention of Congress again, which is as follows:

To the Senate and House of Representatives in Congress assembled:

The Milwaukee and Rock River Canal Company respectfully represents that, under public resolution, No. 4th, entitled "A resolution for the relief of the State of Wisconsin," approved July 1, 1864, (a copy of which is hereunto annexed, marked "Exhibit A," and the settlement made thereunder, the amount of trust-funds arising from the sale of canal-lands, found by the Commissioner of the General Land-Office to have come into the possession of the State of Wisconsin, was \$156,789 77
The amount credited to that State, for sums by it properly paid out, "toward the cost of selling the land, and toward the construction of said canal," was 55,434 72

So that the balance of the trust-fund amounted to 101,355 05

Which balance was, by such settlement, placed in the United States Treasury, and was the fund out of which said resolution directed this company to be allowed and paid all "such sums of money as have been *properly expended by said company*, in the survey and location of said canal, in the construction thereof, as far as the same has been constructed, together with dams, locks, and slack-water navigation, and in the management and keeping the same in repair," limited only by the amount of said balance, by the terms of the said resolution.

The amount actually allowed by said commissioner to said company as trustee and paid to it out of that trust-fund, was 76,492 77

So that there remains of that trust-fund in the United States Treasury .. 24,862 28

Your petitioner further shows that several large items, claimed by this company upon such settlement, were disallowed by the Commissioner; and among the items so rejected were at least two, which, as your petitioner is advised and believes, should

have been allowed in order to carry out the plain intention of Congress, as expressed in said joint resolution, to wit:

1st. The amount ascertained by the Commissioner to have been paid out by this company from time to time for interest.....	\$55,545 77
2d. An amount expended by the company for repairs and management of the canal, after the date of the resolution, but prior to the date of the settlement thereunder	2,937 51
Making, together.....	58,483 28

Your petitioner is advised, and believes, that the last-named amount should have been allowed to it, and that this company should have been paid, on account thereof, the balance of said trust-fund, to wit, said sum of \$24,862.28, in addition to what was paid to it as aforesaid.

The only reason or ground on which the said item for moneys paid out for interest was rejected was this, in the language of the Commissioner, to wit:

"Disallowed, because interest forms no part of the cost of survey, location, construction, or management of any such public work, and is never charged in these accounts, the same being a liability of the company, not an expenditure upon the work. Its payment is not provided for by the resolution, and is against the policy of the Government and Congress, unless expressly provided for in the statute."

Your petitioner is advised that this reason is inapplicable, and must have been given in haste, without a full and adequate comprehension of the nature of the case.

All the facts hereinbefore stated appear more fully in the reports of the said Commissioner, Nos. 18340 and 18341, of which true and certified copies are herewith submitted.

If the relations in which the parties—the United States and this company—stand are considered, it is believed that no doubt can remain as to the justice, or as to the legality under said joint resolution, of the demand herein preferred. The mistaken use of the word "*cost*" by the Commissioner would seem to have led to confusion and error.

This is not the case of a settlement between the United States and the company, under a contract by the former, to *purchase the works* of the latter, at the sum which shall be found to be equal to the *cost* of the same, or equal to the amount expended by the company in constructing, repairing, and maintaining the same, or the like. In *such* a case it might be urged with great force that sums paid by the company for interest, in procuring money to put into the work, should not be allowed, for the reason that they were not properly *put into* the work, because it would be properly only the amount which the company put in of its *own* moneys that could be considered, and it would be immaterial how the company obtained the money, by borrowing, selling property, or otherwise, and the Commissioner could not consider the losses of the company in obtaining the money.

But *this case* is altogether different. This is a settlement between *principal and agent*, and therein lies the material distinction. The United States is the donor or principal, and the company is the mere agent or trustee. All that the company has ever done in the matter of the canal it has done simply as agent or trustee—with an agency or trusteeship coupled with an interest, to some extent, as a mere security; but, after all, it was an agent or trustee, and nothing more, and now this principal proceeds to settle with this agent.

The company did not build, maintain, repair, and manage the canal as its own absolute property in its own right, nor had it any power to do so. By the terms of the charter, (territorial act, approved January 5, 1838,) re-enacted or confirmed by the act of Congress, (approved June 18, 1838,) it was fully provided that the company should not build or hold the canal as its own property, but that it should surrender the same to the State, on being re-imbursed the amount expended thereon, with interest. (See section 23 of charter, and section 9 of act of Congress.) Both the charter and the act of Congress confirming the same, and granting the land, are contained in the pamphlet herewith submitted, marked "Exhibit B," pages 22 and 60. By section 5 of the act of Congress granting the land, this fund arising from the sale of the lands was expressly pledged to the company as a security for its outlay and interest. By section 8 of the charter, so confirmed by act of Congress as aforesaid, the company was *expressly* "*authorized to borrow any sum of money which may [might] be necessary for the proper and efficient prosecution of the work authorized by this [said] act.*"

So the material facts are clearly shown. The company was a mere *agent or trustee*, authorized simply to build, repair, and maintain the canal and hold it, *in trust*, to hand it over, upon being re-imbursed, principal and interest, having full and *express authority*, as such agent or trustee, *to borrow money* to promote the business of the trust, and to pay interest. It is clearly in proof, and is not denied, that the company did borrow money, and did pay out altogether the sum above named for interest on moneys borrowed and used in building the canal. Now, Congress recognized this agency and trust, and the

rights of the company as trustee, and resolved to settle with such trustee and agent, allowing to it credit as aforesaid for all sums by it "*properly expended*," &c.

It will be seen by reference to said act of Congress donating the land, (section 5 of the act of June 18, 1838, *ante*,) that these very moneys, to wit, the avails of the sales of these trust-lands, were expressly pledged to the re-imbursement of the company to the extent of the extinguishment of the claims of all other stockholders except the State.

Your petitioner submits that there can be no doubt that in *such a settlement, between principal and agent*, where the agent has been charged with a certain business, *with express authority to borrow money and pay interest* in executing the trust or agency, the sums so actually paid out by the agent in good faith pursuant to such authority, for interest on moneys borrowed to carry on the work, are moneys "*properly expended*" by the agent; and when, as in this case, the principal authorizes a settlement to be made with such agent in which *credit shall be allowed to the agent for all sums by him properly expended about the business of the agency*, there is no room to doubt that sums so paid out by him for interest, *strictly pursuant to his authority*, should be allowed to him as well as any other proper and justifiable expenditure. It will be seen that your petitioner is *not* now asking for interest on its investment in the work, (though it is advised that it was strictly entitled to that,) but simply for re-imbursement for sums actually paid out by it as agent, within the scope of its authority, about the business of the agency.

Again, as to the other and smaller item above mentioned, for moneys which the Commissioner reports to have been expended by the company, *after the passage of the resolution*, in ordinary repairs and management, it is submitted that that is fairly embraced in the terms of the said resolution of July 1, 1864. It is believed that a fair construction of that resolution embraces that item. Certainly such was the intention of Congress. Certainly a fair and usual interpretation of the language employed would carry the accounting up to the date of the actual settlement or decision of the Commissioner—making the same final—and that, notwithstanding the past tense is employed therein.

If a statute, in authorizing a probate court to settle with administrators, or the court of chancery to settle with receivers, provides that credit shall be allowed to the administrator or receiver, as the case may be, for all sums which he *has properly expended* about the business intrusted to him, surely the court would allow credit for all sums so properly expended, up to the day when the settlement is made, although the act employs the past tense; and so in all like cases. It was the duty of the company, as agent or trustee, to expend these sums for repairs, &c. It was as clearly the duty of, or a charge upon, this trust-fund to re-imburse such expenditure. It was agreed that this outlay was made rightly, though after the date of the resolution. It is agreed, indeed, that these would be every way proper items to be allowed, if they had only been expended prior to the passage of the joint resolution. It is believed that no further argument is necessary to show the propriety of allowing the item in question.

Your petitioner therefore prays that the intention of the resolution of July 1, 1864, may be carried out according to its true meaning; and that the remainder of said trust-fund, amounting to \$24,862.28, may be appropriated and paid to this petitioner, in full of all demands. Such further appropriation becomes necessary, in order to give effect to the intention of Congress, for the reason that the said Commissioner was of opinion that the language of said former resolution was not explicit enough to warrant such allowance, and your petitioner will ever pray, &c.

Dated at Milwaukee, December 8, 1865.

The Milwaukee and Rock River Canal Company,

By O. H. WALDO, *Its Attorney*.

According to the terms of the resolution of Congress of July 1, 1864, above set out, it will be observed that the Secretary of the Interior was to settle and allow the company such sums of money as had been properly expended by it in the survey and location of the canal, in the construction thereof, as far as the same had been constructed, and in the management and keeping the same in repair; and these moneys were to be paid to the company out of any money in the Treasury not otherwise appropriated, not to exceed in any event the balance charged against the State of Wisconsin upon the sale of the canal-lands, after deducting the sum allowed the State for money paid by her out of the same fund. To make the decision of the Secretary a finality, it was provided that the amount found by him due to the company should be received by it in full payment and satisfaction of all claims of the company against the State and the United States on account of the grant, and on account of the action of the Territory, State, and the United States in relation thereto.

The final adjustment of the accounts by the Commissioner of the General Land-Office appears by the memorial above inserted.

Two complaints are urged against this adjustment:

First. That the company was not allowed interest upon money borrowed under the power given in its charter to enable it to obtain means to construct and operate the canal.

Second. Because the expense-account of the company was limited to the date of the resolution, and not brought down to the time of the settlement made upon the report of the Commissioner.

The reason of the Commissioner for disallowing the interest claimed was, that interest formed no part of the cost of survey, location, construction, or management of the work; that the same was a liability of the company, and not an expenditure upon the work.

The amount allowed by the Commissioner and paid out of the trust-fund was.....	\$76,492 27
There yet remains of this trust-fund in the United States Treasury	24,862 28

The two items disallowed by the Commissioner are as follows:

1. The amount of interest paid out by the company from time to time..... \$55,545 77
2. The amount expended by the company for repairs and management between the date of the resolution and the date of settlement..... 2,937 51

Congress is now asked to review the conclusions of the Commissioner upon these two disputed items, and to overrule them, and to pass an act giving to the company what remains in the Treasury of the United States of this trust-fund, which sum, it will be remembered, is \$24,862.28.

The resolution under which this adjustment was made was designed to be a final disposition of the whole matter. There were three parties in interest, it was carefully drawn, and we must presume the words employed were well weighed. It was an instrument of submission, and the powers of the Secretary, and of the Commissioner under him, were carefully limited, and unless the Commissioner was clearly in error we ought not to disturb the settlement, since the company was pledged to receive the amount awarded in full payment and satisfaction. One of the parties to that settlement, the State of Wisconsin, is not here by memorial asking for its disturbance.

The company has received the money awarded by the Commissioner. Ordinarily this should and would estop it from making further claim on a matter submitted to the Commissioner, and decided by him. But it is in evidence that though the voucher is lost which the company gave upon receipt of the money, a clause was inserted reserving the right of the company to appeal to Congress to overrule the decision of the Commissioner upon the disputed items. It is further shown that the Acting First Comptroller at the time of the settlement at the Treasury informed the attorney of the company that his acceptance of the money would not in any degree prejudice the application to Congress by the company for relief against the alleged errors of the Commissioner.

But clearly the receipt of the money was an estoppel, no matter what reservation was inserted in the voucher. The officers of the Treasury had no power to take any other than an absolute unqualified receipt, nor to commit Congress to specific action or any other action. The law was before them which declared that the sum awarded should be in full payment and satisfaction. The company could refuse to receive the

money and appeal to Congress from the entire award. But it could not approve and disapprove, affirm and disaffirm it, nor could any agent of the Government dispense with the plain requirement of the joint resolution. There was no agent of the Government, except Congress, competent to assent to such a reservation as the attorney of the company made.

We are not prepared to say that the Commissioner erred. His powers were limited to finding what the company had properly expended, not in the way of interest in borrowing money to construct the canal, &c., but in finding what sums of money had been properly expended in the survey and location of the canal, in its construction, &c. This confined him to the ascertainment of the sums expended for these specific objects, without reference to how the moneys had been acquired. Had it been the purpose of Congress to re-imburse the company for its expenditures in the way of interest, that account, amounting to so considerable a sum as \$55,545.77, could not have been lost sight of in the framing of the resolution, and apt words to embrace it would have been employed. But the language of the resolution is rigid in confining the account to be taken to moneys expended upon the work—quite a different thing from expenses incurred in raising the money. What should be thought of the mechanic who, contracting to build a house for ten thousand dollars, should charge his employer one thousand dollars in addition for interest paid on moneys borrowed to do the work; or what should be thought of the same mechanic who had built the house without a special contract, and who should agree with his employer to submit to a neighbor the simple question how much he should be paid for moneys expended in building the house, and who should seek to bring into the account afterward the interest he had paid to obtain the money? The employer might well say to him, "I did not stipulate in employing you to pay any such item, nor does the law imply it. My duty is to pay you the sums of money which have gone into my building in the shape of labor and materials, and nothing more. How you got the money is your own business. If you may charge me interest at all, I must be liable for all you paid—no matter how extortionate the rate."

Now, Congress, in the resolution of 1864, dealt with this company just as if the stockholders had paid up their subscriptions, and the money expended upon the canal had been taken from its treasury. Though the company had the right to borrow, as all corporations organized for any such purpose would have, yet in the adjustment made, of which this resolution is the authority, no allusion is made to the fact that money had been borrowed and a claim for interest existed more than one-half as large as the claim for moneys expended on the work.

Moreover, no interest was allowed by the Commissioner, nor is it claimed that there should have been, on the sums expended by the company, although it would seem that such a claim might have fairly been put up, the moneys having been expended by the company years before the account was taken. We suppose it was not allowed because the resolution made no provision for it. In fact, no allusion whatever is made to interest in the resolution.

As to the other alleged error, we think the Commissioner was right. The resolution provided for an adjustment of the account up to the time of its passage—no longer.

The committee therefore ask to be discharged from the further consideration of the memorial of the company.

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Indian Affairs, to whom was referred the communication of the Secretary of the Interior, with accompanying papers, in regard to the Mission Indians of California, have had the same under consideration, and respectfully report :

Under date of October 28, 1873, John G. Ames, who was appointed a special agent for that purpose in May, 1873, reports to the Commissioner of Indian Affairs the results of his visit to and examination of the Mission Indians of California.

January 8, 1874, he submits a supplemental report, in which he states there are about 4,000 of those Indians.

The Commissioner of Indian Affairs, January 22, 1874, transmits to the Secretary of the Interior the reports of Agent Ames, and states there are about "5,000 souls" in the several tribes known as the Mission Indians; indorses the report of Agent Ames; commends its statements to approval; and recommends an appropriation of \$150,000 for their immediate relief, and that an Indian agency be established among them for their supervision and care.

The Secretary of the Interior, January 24, 1874, transmits to the chairman of this committee the above reports and correspondence for the consideration of Congress, and states that "their present wretched condition, as reported to this Department, calls for some legislation for their immediate relief."

On the 20th of February, 1874, the Secretary of the Interior transmits to the chairman of this committee, for the consideration of Congress, "a copy of a report, dated the 18th instant, from the Commissioner of Indian Affairs, and accompanying papers therein referred to," and again recommends legislation in behalf of those Indians. The report referred to is a communication of the Commissioner of Indian Affairs, dated February 18, 1874, to the Secretary of the Interior, transmitting a letter from the Rev. J. G. Ames, special agent, dated February 17, 1874, with copies of the inclosures therein referred to. The letter of Rev. J. G. Ames, of February 11, 1874, merely states that he transmits, for the information of the Indian Office, "Extract copies of letters received by him from Mr. M. H. Crafts, of San Bernardino, and C. N. Wilson, of Los Angeles, Cal." The letter of Mr. Wilson to Mr. Ames states: "The recommendations in your report are, in my opinion, all very good, and if any or all of them are carried out by the Government, must be of great advantage to the Indians;" "they trust in the promises made by you to them, and look for speedy help from the Government."

The letter of Mr. Crafts relates mainly to the shooting of an Indian by a white man, and the efforts of Mr. Crafts to have the white man arrested in January last.

The report of Mr. Ames, October 28, 1873, enters largely into a history of the Mission Indians, their present condition, and the treatment they have received from the white race settled near them, in two or three counties of Southern California, since the occupation of that country by the United States. It states that under Spanish rule they were humanely treated, and for 100 years have had the benefits derivable from Catholic missions among them; that the Mexican republic succeeding to the sovereignty of the country, they were regarded and treated as citizens, and allowed the right to vote, adopting for this purpose the report of Mr. Whiting, an Indian superintendent, who sustains this view, and thereupon argues, under the terms of the treaty of Guadalupe Hidalgo, that they were to sustain the same relation to the United States they did to the Republic of Mexico; that they are of right citizens of the United States. The report states they have not been so regarded or treated by this Government, but have suffered in various ways from neglect and abuse, no attention being paid either to their rights or wants; that they have from time to time been driven from their homes, and that the several tribes are now scattered in small settlements, rancherias, or villages, between the white settlements and the borders of the desert to the east; that they still sustain the tribal relations, and decline to separate, settle, and occupy the country as other people, or to go on to any reservation which might be set apart for them, but insist upon their right to hold, by occupancy, certain lands and districts of country as their tribal property, descended to them from their forefathers; express a desire to have schools; to receive implements of husbandry, or any other instruments of improvement and civilization the United States may feel disposed to donate to them. It is now proposed to appropriate \$150,000 for their relief and benefit, and to inaugurate a system of gratuities and annuities applicable to them, doubtless, so long as their present condition and relations may continue. It seems strange, after 100 years of association with the white race, partially, if not continuously, under the influence of our civilization, occupying agricultural lands and pursuing an agricultural life, the request should be made to furnish these tribes with seed and farming implements, the first instruments of husbandry, for food and clothing, articles it might reasonably enough be supposed they would, by this time, have secured for the most ordinary purposes of life.

The facts submitted do not offer a basis upon which to found a final system in our treatment of these Indians. If they will not go forward and accept the higher plane of American citizenship, abandon the tribal relation, and accept the benefits of our pre-emption and homestead laws, but prefer to adhere to their ancient system of Indian life, it may be better, after a thorough investigation by a responsible commission of their wants, capacities, and condition, their rights to any portion of the soil, and the final abandonment of any hope to reclaim them as citizens, to enter fairly into some arrangement with them by which they may be transferred to some reservation upon which, in their own right, they may reside, secured and protected by laws of the United States. The proposition to appropriate funds (an easy method so long as the funds may be cheerfully furnished) to meet any mere passing demands we feel is but a temporary and unsatisfactory plan. It contemplates no settlement of the difficulty, and does not present a sound and final set-

tlement of the question. The lands in California are held either under recognized grants from the Mexican government, or, if public, are open to settlement under our generous homestead and pre-emption-laws. There is no middle ground upon which to build a middle policy in the settled portions of the country for a class of people who will not accept our citizenship nor conform to our civilization. It is a difficult subject to deal with, presenting new and unpleasant features at every turn. It is by no means a pleasant reflection to contemplate the fate of an unfortunate race which will not willingly accept the destiny of elevation to American citizenship, with all the social privileges to follow from civilization, but seem rather to adhere to that other destiny which leads to no hope, possibly to extermination. We indulge the conviction that the American people will not long endure a policy which may look to fostering this race in idleness and ignorance upon its bounty, perpetuating the prejudices of past ages, and nursing the relations forever festering between civilized and barbarous peoples.

We ask to be discharged from the further consideration of the subject.

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IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

R E P O R T:

The Committee on Pensions, to whom was referred the memorial of William H. Babcock, asking an increase of pension, have considered the same, and submit the following report :

Memorialist states that he was a private in Company C, One Hundred and Seventy-seventh Regiment New York Volunteers in the war of 1861, and served in the Department of the Gulf; was at the siege of Port Hudson, where he became permanently disabled by an incurable hernia, in August, 1863; that he made application for a pension, which was granted, rating his disability at one-half, to date from September, 1863. He now asks for a special act, directing the Commissioner of Pensions to raise his pension to \$8 a month.

There is no evidence whatever accompanying the memorial, and it is not sworn to. It does not appear whether the memorialist has applied to the Pension Bureau for the increase which he asks, but it is probable, from the fact that he asks the passage of an act directing the Commissioner to increase the monthly allowance. If memorialist's disability is now total, as alleged, upon proof of the fact, the relief sought will be granted by the Commissioner of Pensions. The committee, therefore, ask to be discharged from the further consideration of the memorial.

IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

R E P O R T :

The committee on Pensions, to whom was referred the petition of Chloe Ann Ketcham, widow of Arche M. Ketcham, late of the State of Wisconsin, have considered the same, and submit the following report :

It appears from the evidence that petitioner's husband, with a number of others, were employed at their respective homes, in Wisconsin, about the month of August, 1864, to go South to work as mechanics, in Government employment or on Government contracts; that their expenses were paid to Saint Louis by a Mr. Choate, who employed them; that at Saint Louis they were sworn into Government employment for six months, and then sent, under a Mr. Wilson, to Little Rock, Ark., where they were put to work. That Ketcham soon after fell sick and went to the hospital, and was finally discharged, and left for his home before he was in condition to travel, and never reached home. His wife and the witnesses who testify in the case believe that Ketcham died on his way home, he never having been heard of by them since.

Mr. Tyler testifies that Ketcham, when discharged, was paid off in a due-bill, which he was obliged to sell at a heavy discount to get money to go home, and that he had to pay his board at the hospital after he was discharged.

It is plain enough from the testimony that, assuming Ketcham's death, of which there is no proof, he was employed by some contractor on Government works, and not by the Government itself. They were to receive \$70 per month, and board or rations, as may be inferred from the charge for board of Ketcham after he was discharged. The hospital was a private establishment, evidently, because the Government would not have charged a sick man for board; and then Ketcham was paid off in a due-bill, which clearly enough settles the nature of the service. The contract was of a private nature beyond question. The case does not come within the scope of the pension-laws. There is no claim whatever upon the Government.

THE STATE OF THE UNITED STATES

IN SENATE, January 10, 1877.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE, IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE, MAY 10, 1876.

ALBANY: PUBLISHED BY THE STATE OF THE UNITED STATES, 1877.

THE STATE OF THE UNITED STATES, 1877.

THE STATE OF THE UNITED STATES, 1877.

THE STATE OF THE UNITED STATES, 1877.

IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 1122.]

The Committee on Pensions, to whom was referred the bill (H. R. 1122) granting a pension to Mrs. Martha E. Northup, submit the following report:

She is the widow of First Lieut. Edward B. Northup, of the Seventeenth United States Infantry, whose military record, as furnished by the Adjutant-General, is as follows:

ADJUTANT-GENERAL'S OFFICE,
Washington, January 28, 1874.

Military history of Edward B. Northup, United States Army, as shown by the files of this Office.

VOLUNTEER RECORD.

Entered the service August 8, 1861, as a private in Company B, Forty-fourth New York Volunteers, with which he served until July, 1862. He was discharged as a corporal on surgeon's certificate of disability October 11, 1862, because of an accidental wound in the finger of the left hand, (received July 3, 1862,) and from a severe attack of erysipelas, which destroyed the use of the hand.

Appointed second lieutenant Veteran Reserve Corps August 8, 1863, and first lieutenant March 26, 1865. Assigned to the Fourteenth Regiment Veteran Reserve Corps, and served therewith and in the Bureau of Refugees, Freedmen and Abandoned Lands until mustered out, November 8, 1866.

REGULAR ARMY RECORD.

Appointed second lieutenant Forty-fourth United States Infantry 28th July, 1866. Transferred to Seventeenth Infantry 27th May, 1869. First lieutenant Seventeenth Infantry 1st January, 1871. Brevetted first lieutenant March 2, 1867, for gallant and meritorious services at the battle of Malvern Hill, Va.

Service.—With regiment from February 11, 1867, to March 9, 1867; on duty with superintendent War Department buildings to June 30, 1868; on leave of absence to August 31, 1868; in garrison at Washington, D. C., to March, 1869; Petersburg, Va., to June, 1869; Lynchburgh, Va., to February, 1870; Richmond, Va., to April, 1870; on frontier duty, at Grand River agency, Dakota, to May 6, 1871; Fort Stevenson, Dakota, to June 22, 1872; Grand River agency, Dakota, to September 16, 1872; on leave of absence to March 4, 1873, on which date he died at Sioux City, Iowa, while en route to rejoin his company.

E. D. TOWNSEND,
Adjutant-General.

The occasion of the death of Lieutenant Northup is furnished in a certified copy of the coroner's inquest held over his dead body at Sioux City, Iowa, on the 5th day of March, 1873, which is as follows:

STATE OF IOWA, *Woodbury County*, ss :

At an inquest held upon the body of Lieut. E. B. Northup, of the Seventeenth United States Infantry, on the 4th and 5th days of March, 1873, before J. J. Saville, coroner in and for said county, whose body is now here lying dead, by the jurors whose names are hereunto subscribed, the said jurors on their oaths do say as follows, to wit: We, the jury, find that Lieut. E. B. Northup, of the Seventeenth United States Infantry, died at the Depot Hotel, in the city of Sioux City, State of Iowa, on the 4th day of March, A. D. 1873, at or about 3 o'clock p. m., from the effects of an overdose of chloral hydrate, administered by himself, without criminal intent, during the temporary absence of his nurse, while in a state of great mental and nervous prostration, brought on by the excessive use of intoxicating liquors.

In testimony whereof we have hereto set our hands at the city of Sioux City, in the State of Iowa, this 5th day of March, A. D. 1873.

H. W. CHASE,
J. D. HOSKINS,
L. M. ROGERS,
Jury.

Attest:

J. J. SAVILLE,
Coroner of Woodbury County.

A true copy.

J. J. SAVILLE.

A true copy of a copy on file in this Office.

THOMAS M. VINCENT,
Assistant Adjutant-General.

ADJUTANT-GENERAL'S OFFICE, *January 28, 1874.*

There is no proof accompanying the bill except the papers set out above, if we leave out of consideration private letters. The officer fell by his own hand, not with a criminal intent, says the inquest, but in a frame of mind induced by the excessive use of intoxicating liquors. We have no desire to add a word to what this document affirms, but it cannot be said he was in the line of duty in the intemperate use of stimulating drinks. On the contrary, he violated the rules of the service and exposed himself to punishment. His death, under the circumstances, cannot be ascribed to any disability incurred while in the service. His honorable wounds did not contribute to it. To grant relief to his widow under the circumstances tends to relax the rule against drunkenness in the Army, a crime in the private soldier and a greater one in the officer, who should set an example of sobriety to the men under his charge.

Still, the majority of the committee, in view of the excellent record of this young soldier, and of the further fact that he was not an habitual drinker, and because he has left a widow wholly destitute of the means of support, have agreed to recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T:

[To accompany bill H. R. 816.]

The Committee on Pensions, to whom was referred the bill (H. R. 816) granting a pension to Jane La Font, submit the following report :

Louis La Font, the son of Jane La Font, was a private in the Second Wisconsin Regiment, duly enlisted and mustered into the service, April 22, 1861, and was subsequently transferred to Battery D, First Rhode Island Light Artillery, and died, after more than two years' service, on June 8, 1863, at Lexington, Ky. He was unmarried at the time of his death and has left no issue. His father and mother survive. The former is a cripple and unable to provide a living for his family by manual labor. Both are old, having been married in 1834—forty years ago. The father owns a house and lot estimated to be worth \$300. It is shown that Louis La Font was a dutiful son, devoting his earnings before enlisting in the Army to the support of his parents. While in the army he sent home \$275 of his money, received for bounty and pay. We think a fair case of dependence upon him for support is made out by the evidence.

There is only one point in the case which caused the rejection at the Pension-Office of his mother's application for a pension, and which has created doubt in the minds of the committee whether its decision should be overruled. We will state it. He was put in the guard-house for intoxication, and while there he was accidentally knocked down stairs, and in the fall his neck was broken and he was instantly killed. He was not intoxicated at the time, nor was his death occasioned by his fault at the time. Under these circumstances, the Pension-Office was of opinion the soldier was not in line of duty at the time his death occurred.

The case is barren of evidence as to the previous habits of young La Font. It is not shown for what period of time he was sentenced to confinement, nor how long he had been there. The circumstances of his intoxication are not given. Nor is it shown how he came to be knocked down stairs without his fault; all we have on the subject is the affidavit of his lieutenant, that he was sober at the time, and without fault of his he was knocked down stairs.

Was he in the line of duty at the time?

Suppose his intoxication passed off the first night, and he was detained in confinement for days after he became sober, and heartily repented of his fault. He was still bound by his enlistment, and could have been returned to duty at any time. He was still a soldier, and capable, and no doubt willing, to do soldier's duty. Of course, as a prisoner, he was

incapable of performing useful duty. Suppose, further, that during this time the command to which he belonged had been attacked by the enemy and he had been killed in prison, but in such a condition that he could render his comrades no service in fighting the enemy. Would his case be stronger?

Intoxication in the soldier is a crime. Of course he knew this and his liability to punishment when he got intoxicated. Still, that punishment was not death. But for the punishment inflicted death would not have occurred; at least, not under the circumstances it did. It did occur, however, in consequence of his being sent to the guard-house and without fault of his while there. He was entitled to protection against bodily harm while in prison. Had his death occurred by the carelessness of another, and under the same circumstances, while he was not undergoing punishment, his mother would, undoubtedly, be entitled to a pension.

The Secretary of the Interior, on April 10, 1869, undertook to decide when a man was in the line of duty. He says:

"It is my opinion, as a general rule, that the soldier is to be regarded as being always in the 'line of duty' when he is not under arrest, in confinement, on furlough, or absent without leave, although there may be peculiar circumstances in particular cases which should modify this construction."

The law is undoubtedly against the application, and the Commissioner performed his duty in the decision he rendered. But the mother has come to Congress, as a great court of equity, and shown her dependence upon this erring, though to her, dutiful son. He was the reed upon which she leaned, and in his death that reed was broken. Not without misgivings that we have allowed too much latitude to our sympathies, we have concluded to recommend the Senate to pass this bill. The nation to whose service the soldier dedicated his life can better afford to pay her a pension than to suffer the imputation of injustice.



IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 609.]

The Committee on Pensions, to whom was referred the petition of Margaret A. Hoffner for a pension, respectfully report :

That the petition and papers obtained from the Pension Bureau, where petitioner made application for a pension, and failed to obtain the same, show satisfactorily that she is the widow of Richard J. Hoffner, who was an acting master in the United States Navy. That she has three children, all of whom seem yet to be under sixteen years of age ; and that her husband, said Richard J. Hoffner, died in the naval service in Philadelphia, September, 1865, of cancer of the stomach, duodenum, and pancreas.

Dr. A. Nebinger, his family physician for years, testifies that before entering the service Hoffner was in good and vigorous health, had a strong constitution, was temperate and regular in his habits and manner of living ; and that he made a post-mortem examination of Hoffner, and found he died of disease as stated above, contracted in the naval service, from exposure and fatigue incident to his service in the southern waters and in the line of his duty.

On the contrary, the report of the Board of Naval Survey, Surgeon B. F. Gibbs, Assistant Surgeon Robert Willard, and Acting Assistant Surgeon L. R. Boyce, certify and find, May 1, 1866, that "Acting Master Richard J. Hoffner has chronic dropsy, unfitting him for the service," and "no evidence that it was contracted in the line of duty, from the following facts, viz : That he declines attributing the conditions causing the dropsy, under which he suffers, to exposure on duty in the naval service, but refers them rather to continuous residence in malarious climates before serving in the Navy, as well as since.

"Signed by J. C. Palmer, fleet surgeon.

"Approved by the Board of Medical Survey."

There is no other or further evidence in the case, and the committee are left to determine the claim of the widow for pension. From the above there is not the slightest evidence before us as to the time Hoffner enlisted. We cannot, therefore, determine as to the probabilities of the disease having been contracted in the service. Why it should happen that no paper on file states the time of entry of or duration of service by Hoffner, we do not understand. There is nowhere to be found the slightest allusion in any paper to these, as we consider them, material

facts. A history of his service might be of value in determining the origin of the disease, or, at least, would afford ground upon which to determine, in a case where there is a conflict of evidence, with more satisfaction to ourselves, the right of the petitioner.

Since writing the above report, evidence has been furnished, upon the request of the committee, which satisfactorily establishes the fact that the disease was contracted in the service, and in the line of duty. He entered the service in September, 1861, and served continuously until his death. We therefore report a bill, and recommend its passage.



IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 2096.]

The Committee on Pensions, to whom was referred the bill (H. R. 2096) granting a pension to James Roach, have considered the same, and report as follows :

The evidence shows that claimant enlisted in the Navy of the United States on the 22d May, 1855, for three years, and was honorably discharged, as quarter-gunner, on the 16th April, 1858, and that, while in the service, he was seriously injured by the bursting of a cannon at the yard, Washington, D. C., losing one eye entirely and impairing the sight of the other, by which misfortune he lost the position of gunner, to which he would have been promoted. He was serving in that capacity on board the Plymouth at the time.

Among the papers is a very complimentary letter from the late Admiral Dahlgren, dated July, 1861, which leaves no doubt of the facts stated and the merits of the case. The committee, therefore, recommend the passage of the bill.

REPORT

Presented to the Senate of the United States

in response to a resolution of the Senate, passed July 1, 1871, relating to the report of the Committee on the subject of the proposed amendment to the Constitution of the United States, in relation to the right of suffrage.

The report of the Committee on the subject of the proposed amendment to the Constitution of the United States, in relation to the right of suffrage, is herewith submitted. It contains a statement of the facts and circumstances connected with the proposed amendment, and a statement of the views of the Committee thereon. The Committee is of the opinion that the proposed amendment is not necessary, and that it would be better to leave the question of suffrage to the States.

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1874.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

[To accompany bill H. R. 1230.]

Your committee have had under consideration the bill (H. R. 1230) granting pension to Elizabeth W. Prindle, guardian of the minors of Joseph W. Doak, deceased, and respectfully report :

The testimony shows that Doak enlisted as a sergeant in Company D, Fifth Ohio Volunteers, and while in the line of his duty was severely wounded by a gunshot wound in the neck and breast, and because thereof was honorably discharged from the service. Subsequently, he applied for and obtained a pension as an invalid soldier, which was regularly paid up to his death. It also appears in the testimony that, at the time of his death, he was still suffering from the wound, and that in 1866 he was attacked with cholera in the city of Cincinnati, Ohio, and died of that disease. It further appears that, at the time of the attack he was in such a feeble condition from his wounds as not to be able to resist the power of the disease; and your committee is of the opinion that, although under existing laws the minor heirs would not be entitled to a pension, yet the peculiar facts presented in the case are of such a character as to fairly entitle the petitioner to the relief prayed for, and therefore your committee recommend the passage of the House bill.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1874.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

[To accompany H. R. 107.]

For Committee here and under consideration the bill (H. R. 107) was
referred to the Committee on the subject of the
W. Lloyd, deceased, and respectfully report:

The testimony shows that Dock enlisted as a sergeant in Company
of Fifth Ohio Volunteers, and while in the line of his duty was severely
wounded by a gunshot wound in the neck and breast, and because
he was honorably discharged from the service. Subsequently, he
applied for and obtained a pension as an invalid soldier, which was reg-
ularly paid up to his death. It also appears in the testimony that at
the time of his death, he was still suffering from the wound, and that
in 1863 he was attacked with cholera in the city of Cincinnati, Ohio,
and died of that disease. It further appears that at the time of the
attack he was in such a feeble condition from his wounds as not to be
able to resist the power of the disease; and your committee is of the
opinion that, although under existing laws the minor heirs would not
be entitled to a pension, yet the peculiar facts presented in the case are
of such a character as to fairly entitle the petitioner to the relief prayed
for, and therefore your committee recommend the passage of the House

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1874.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Patsey Inlow for a pension, respectfully report:

That they have had under consideration the application of Patsey Inlow, widow of Abraham Inlow, for pension, and report that it appears from the papers in the case that Abraham Inlow was a private in Company F, 53d Regiment Enrolled Missouri Militia. The captain of the company states that while in active service said Inlow, in the month of October, 1864, complained of being unwell, and was granted a verbal furlough to return to his home in Pike County. It also appears that on the 13th day of October, 1864, he died of lung fever. The attending physician states that he knew him before he entered the service, and that he was apparently a healthy man; that his disease originated in a cold, which he thinks must have been contracted while in the service. There is no evidence showing the length of time this soldier was enlisted for, and no evidence showing that he was at any time under the command of United States officers.

Your committee, therefore, are of opinion that the case does not fairly come within the spirit of the provisions of sections 1 and 8 of the act of March 3, 1873, nor are they fully convinced that his death was caused by any disease contracted while on active duty, either in the service of the State of Missouri or in the service of the United States, and therefore report adversely upon said petition, and ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1874.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

Your committee have had under consideration the [application of Henry Woodson, late private Company H, Fifth Regiment Missouri State Militia, praying for a pension, and find that under the statements made in the petition the petitioner would be entitled to a pension under existing laws, if the statements made in his petition are wholly true, from the date of the passage of the act of March 3, 1873, without special legislation in his behalf; but he asks to have the pension date back to the time of his disability, which request, if granted, would be in violation of a well-established rule of Congress upon this subject. No evidence is filed with the petition.

Your committee therefore report adversely upon said petition, and ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES

March 22, 1874—Ordered to be printed

Mr. Allison submitted the following

REPORT

That committee have had under consideration the application of Henry Woodson, late private Company H, Fifth Regiment Missouri State Militia, praying for a pension, and that under the statements made in the petition the petitioner would be entitled to a pension under existing laws, if the statements made in his petition are wholly true, from the date of the passage of the act of March 3, 1873, without special legislation in his behalf; but he asks to have the pension date back to the time of his disability, which request, if granted, would be in violation of a well-established rule of Congress upon this subject. The bill is filed with the petition.

That committee therefore report adversely upon said petition, and ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1874.—Ordered to be printed.

Mr. ALLISON submitted the following

R E P O R T :

[To accompany bill H. R. 1227.]

Your committee have had under consideration House bill No. 1227, directing that the name of Eliza H. Maxham, mother of Samuel W. Maxham, late a private in Company E, Second Regiment United States Sharpshooters, be placed upon the pension-rolls, and that she be paid a pension at the rate of \$8 a month from the death of said Samuel W. Maxham, on the 6th day of May, 1864.

This bill is accompanied with a report of the House committee, which is respectfully referred to; and your committee concur in the general conclusions of that report, and recommend the passage of the bill with the following amendment: Strike out all after the word "month," in the eighth line, down to and including the words "eighteen hundred and sixty-four," in the tenth line, and insert "from and after the passage of this act."

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IN THE SENATE OF THE UNITED STATES

March 21, 1877—Ordered to be printed

Mr. Allison submitted the following

REPORT

of the committee on the Judiciary

their committee have had under consideration House bill No. 1277,
relating to the name of John H. Alexander, brother of Samuel A.
Alexander, late a private in Company E, Second Regiment United States
Infantry, be placed upon the pension rolls, and that she be paid a
pension at the rate of \$8 a month from the date of said Samuel A.
Alexander, on the 6th day of May, 1861.
This bill is accompanied with a report of the House committee, which
respectfully referred to; and your committee concur in the general
recommendations of that report, and recommend the passage of the bill with
the following amendment: Strike out all after the word "month," in the
twelfth line, down to and including the words "eighteen hundred and
eighty-four," in the tenth line, and insert "from and after the passage
of this act."

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 216.]

The Committee on Pensions, to whom was referred the bill (H. R. 216) granting a pension to Timothy Paige, father of Wilkinson W. Paige, late captain of Company M, Tenth Regiment New York Cavalry Volunteers, have considered the same, and submit the following report:

The papers filed in the Pension-Office in connection with the case, now before the committee, are very numerous. Two former applications for pension, based upon the death of Wilkinson W. Paige, have been made by different parties; first by the present claimant, and then by his grandson, George W. Paige, son of the deceased soldier, both of which were granted, the former at \$20 per month and the latter at the rate of \$8 per month, showing great confusion and misapprehension of the facts of the case, both in regard to the rank of deceased and the proper party entitled to relief.

The evidence shows that Wilkinson W. Paige was enrolled as a member of Company M, Tenth Regiment New York Volunteer Cavalry, on the 28th day of March, 1864, and was killed in action at Saint Mary's Church, Virginia, on the 24th day of June, 1864. It appears from the evidence on file that he had been in the service prior to this enlistment as a captain, and had been dismissed, but the cause is not explained. It further appears that Wilkinson W. Paige was married in the State of Michigan in 1850, and had a son (George W.) born to him in January, 1852. Afterward he removed with his family to Buffalo, N. Y., where his father resided, and some years later separated from his wife, she returning to her people in Michigan, taking the child with her, where she sought and obtained a divorce from her husband, and married again, the said Wilkinson thereafter residing with his father until he entered the Army.

On the 22d of November, 1866, claimant filed his application for a pension, alleging dependence upon his son for support, stating, in a general way, that he had been mainly supported by the son's wages for several years before he entered the service, and averring specifically that after two months from that date he received from the son the sum of fifty or sixty dollars per month on an average, and continued to receive such contributions up to the time of his death. He further testified that his said son "left no widow or minor child surviving, he never having been married." The Commissioner of Pensions required that the celibacy of the soldier should be proved by credible witnesses, where-

upon the affidavits of Edwin Shepard and Benjamin G. Wright, both certified to be respectable citizens of Niagara County, New York, were forwarded, in which they say, from a long-continued acquaintance with said Wilkinson W. Paige, and from their own personal knowledge, said Wilkinson W. "died leaving neither wife, child, or children him surviving." This testimony seems to have completed the evidence required, and claimant's name was admitted to the pension-roll, to be paid at the rate of \$20 per month, and he had drawn to the 4th of March, 1869, the sum of \$1,126.67, besides the arrears of pay due at the date of the soldier's death, when, on the 26th of May, 1869, John Dabney, the step-father and guardian of the minor son of the deceased soldier, then residing in the State of Minnesota, filed his declaration in the Pension-Office, with full proof to establish his ward's claim. Notice was at once sent to the agency to suspend further payment to claimant, and an agent afterward dispatched with the papers to the residence of the claimant, with instructions to recover the money which had been wrongfully taken, and to investigate the matter with a view to a criminal prosecution. Claimant was arrested and held to bail to await the action of the grand jury. In the mean time claimant raised and paid to the agent the sum of \$100, which was all that he could command, and explained the way in which the erroneous declaration touching the celibacy of his son was made. Perrigo, his attorney, drew up the paper just as it now appears on the files of the office, and when read to claimant he told the attorney it would not do, and he thought it had been corrected before signing it, so that it would read that his son "left neither wife or child him surviving," which he then believed to be the fact, as his son had repeatedly told him that his child was dead. Upon this explanation and the exhibition of the original copy of declaration, with the alteration as suggested by claimant, which was found in the office of the attorney after he had absconded to avoid indictment for frauds upon pensioners, coupled with the general good character of claimant for veracity, the agent, General Avery, exonerated him from any intentional wrong, and recommended that the proceedings against him be dismissed, the \$100 returned to him, and a certificate issued restoring the pension to him after the grandchild should complete his sixteenth year, deducting from future receipts, however, the amount which he had already drawn.

In the adjudication of the case of the minor the rank of the soldier was brought in question. The Adjutant-General of the Army notified the Commissioner of Pensions, on the 4th October, 1870, that Mr. Paige was not recognized by that officer as having been in service as captain Company M, Tenth New York Cavalry, subsequent to his dismissal, May 6, 1863, and he invited the Commissioner's attention to the indorsement made upon the application by the Hon. B. Van Horn, to have Wilkinson W. Page mustered as captain Tenth New York Cavalry, a copy of which he inclosed, dated January 11, 1867, and from which the following extract is made:

The records of this office show that the disability resulting from the first dismissal of Captain Paige was not removed, so as to permit him to be re-commissioned and to re-enter the service, until February 6, 1864. He did not rejoin the Tenth Regiment New York Cavalry, after being re-commissioned, until May 25, 1864; and had the company (M) been of the minimum strength, which was not the case, he could not properly have been mustered into the service prior to that date; so that instead of any further pay being due his heirs, it will be seen that they are indebted to the United States.

It is proper to remark [continues the indorsement] that there is no evidence on file in this office of the muster-in of Captain Paige on March 28, 1864, the inclosed certificate from Major Lee being the only evidence of the fact. If the fact had been reported

TIMOTHY PAIGE.

to this office at the time, the muster would have been revoked for the following reasons, viz: 1st. Mr. Paige had not joined the regiment in which he had been commissioned, and therefore could not have entered upon his proper duties as an officer. 2d. A legal vacancy did not exist for him as captain.

The case of the minor, George W. Paige, was settled, and he was paid at the rate of \$8 per month from the death of his father to the completion of his sixteenth year, 29th January, 1868, together with arrears of pay.

Soon after the dismissal of the prosecution against claimant he made application for the renewal of the pension which he had formerly enjoyed, the grandson having passed the age of sixteen, which was refused by the Commissioner of Pensions, and it is now for the second time before Congress, having been reported to the Senate adversely during the second session of the Forty-second Congress.

The committee have sought diligently among the papers of the case for reasonable grounds for concurrence in the recommendation made by General Avery to the Commissioner of Pensions for the relief of claimant, who is represented now as seventy-five years old, quite infirm, and without the means of subsistence. But the testimony, when carefully examined, is far from satisfactory, and this case itself furnishes a sufficient illustration of the necessity of some care in the examination of claims against the Government for money.

In the first place, the alleged dependence, though proven by two reputable citizens of Buffalo, N. Y., Henry Lambert and John W. Wakeman, besides the claimant's own testimony, is so vague and indefinite as to impress one with the conviction that the witnesses knew but little of the amount annually contributed by the son toward the support of the father. During the years 1861, '62, '63, and '64 they were living neighbors to claimant, and knew that his son Wilkinson was his only reliance for support. That he sent to his father different sums of money, from time to time, while in the United States service, some of which they saw, ranging from \$40 to \$60, in packages addressed to claimant. But no reference is made anywhere to the business or employment of the said Wilkinson before he entered the Army, how much he earned annually or how much he expended. It must be confessed, when his record in the Army and the grounds upon which his wife based her application for divorce, viz, neglect and desertion, are considered, one may well doubt whether he made more than a support for himself. Besides, claimant's own statement, in his letter of 24th November, 1873, to the Hon. George G. Harkins, modifies somewhat the allegation of total dependence. By way of urging his claim the more effectually, he states that he spent all he was worth to get his son into the service. Then the letters from his son inclosing money while he was in the Army would be the best evidence that the son did contribute toward claimant's support. At the same time it must be borne in mind that Captain Paige was dismissed from the service on the 6th of May, 1863, and was not in service again, so far as can be ascertained from the records of the War Department, until the 28th of March, 1864, and then only as a private for the two months and a half which he survived thereafter; so that claimant is probably in error as to the average amount contributed monthly down to the date of his son's death.

It is not necessary, for the proper disposition of this case, to animadvert with great severity upon the declarations and conduct of claimant in procuring the pension which was wrongfully granted to him; but he is a man of fair intelligence, writes a very good hand for one of his age, and is said to have occupied many positions of honor and trust in the

communities where he has resided. He cannot, therefore, be held entirely excusable for allowing his attorney to so abuse his confidence. Besides, it is difficult to imagine why the declaration first drawn up, and which was exhibited to General Avery, showing the alteration which had been suggested by claimant, was not used. One would suppose, from claimant's statement, that it was corrected by the attorney, after having been read and signed on the spot. The only change required to make it conform to claimant's suggestion, was to strike out the words "he never having been married." If it was because the words erased would have put the pension authorities upon notice of an important fact, which seems to have been carefully concealed, thereby causing further delay and additional proof, perhaps the defeat of the application altogether, it would seem hardly probable that claimant could have remained profoundly ignorant of the reason for suppressing the original draught. If, however, he had no suspicion before, when called upon to prove the celibacy of the soldier by credible witnesses, to suppose that he had no misgivings touching the want of fullness of the declaration which had been filed, would be giving him credit for less intelligence than he is believed to possess. Then, who found the witnesses to testify to the celibacy of the soldier? Probably the attorney. But it is a little remarkable that no one who testified in behalf of claimant on his first application, mentioned, or in any way alluded to, the marriage of the soldier, or that he ever had a child born to him.

Doubtless claimant's memory is impaired, which may account for some of the omissions alluded to. It will be seen by reference to his recent letter, before mentioned, speaking of the entire satisfaction with which his explanation to General Avery, touching the manner in which he had been drawn into the misrepresentation about the celibacy of his son, was received, he remarks, by way of commending his case to the favorable consideration of Congress, that he "settled with [and] paid him," whereas, of the twelve to fifteen hundred dollars received, he only paid General Avery one hundred. It is also to be remembered that, as early as January, 1867, before the pension was granted, it was known to claimant's friends, if not to himself, that his son was not recognized at the War Department as captain for more than twelve months before his death, but the fact was concealed from the Pension-Office. The commission of the governor of the State of New York, with the certificate of muster-in by Major Lee, appearing sufficient to the Commissioner of Pensions, no examination of the records of the War Department was deemed necessary. But the attorneys of claimant knew the fact, and the importance of it, and sought to have the muster-in made, which was refused, as already stated.

The original case of claimant was worked up by an adroit and unscrupulous attorney, and reflects little credit upon the claimant or the witnesses who testified to the celibacy of the soldier, whatever rumors they may have heard touching the death of his minor son; and the case under consideration, in the judgment of the committee, is without merit. The indefinite postponement of the bill is therefore recommended.

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1874.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

[To accompany bill S. 613.]

The Committee on Pensions, to whom was referred the petition of Jefferson A. French for an invalid naval pension, submit the following report:

It appears by the papers filed in this case that said French was appointed an acting volunteer lieutenant in the United States naval service, Mississippi squadron, on the 1st of October, 1862, and served as such until the 17th of June, 1864, when he was honorably discharged from said service.

On the 23d of June, 1864, he re-enlisted as a first-class pilot, and served as such until the close of the war, and was again honorably discharged on the 20th day of August, 1865.

It is also shown that the petitioner was assigned to duty on the United States steamer W. W. Brown, a dispatch-boat, as the commanding officer, on account of his knowledge and skill as an old and experienced river boatman. He also had temporary command of the transport Rowenna on special occasions.

On the 6th of April, 1863, having just arrived at Cairo, Ill., from the fleet at the mouth of Yazoo River, with a load of cotton on board the Rowenna, he was ordered by Fleet Captain A. M. Pennock, commanding the United States naval station at Cairo, Ill., to go, with as little delay as possible, with said steamer to Saint Louis, Mo., for a load of naval stores. Petitioner immediately gave orders to have the cotton unloaded, and set about making ready for the trip. Having no Saint Louis pilot on board, it became necessary to procure one, and with this object in view said petitioner went ashore to search among the river men at that port for a Saint Louis pilot. Upon reaching the platform of the depot of the Illinois Central Railroad, which composed a part of the sidewalk of one of the streets in the city of Cairo, he met Jacob Cox and Robert W. Coles, pilots, and, while conversing with them in regard to the chance of getting a Saint Louis pilot, petitioner either leaned against or sat upon the railing of said platform, when it suddenly gave way, and petitioner was precipitated backward, falling a distance of some twenty feet to the ground, striking upon his right shoulder and head, breaking his collar-bone, and injuring his head and spine. His apparently lifeless body was immediately carried to the steamer, and Dr. F. W. Wonderlich, surgeon of the receiving-ship, summoned, who, after an examination of the case, with the results above stated, and rendering such assistance and treatment as was necessary at the time, left petitioner in charge of a surgeon's steward, with direc-

tions for further treatment. As there was no hospital at Cairo, the doctor advised his remaining on board the steamer. On her arrival at Saint Louis two other surgeons were summoned, who treated him while the steamer remained at that port.

On the return of the steamer to Cairo, Captain Pennock, finding petitioner still suffering greatly from his injuries, placed petitioner in charge of the surgeon's steward, to be taken to his home at Rising Sun, Ohio County, Ind., some 500 miles above Cairo, on the Ohio River, where he remained under treatment until about the last of June, 1863, when, although still suffering, but somewhat better, he returned to his vessel, the W. H. Brown, and remained on board, but under continuous treatment, until he received his discharge at the close of the war, on the 20th of August, 1865. The foregoing is a brief history of the case.

On the 16th of May, 1869, he forwarded his petition for pension to the Commissioner of Pensions, setting forth all the facts in detail, in due form, and made oath to the same. On the 21st of June, 1869, a letter from the Pension-Office requests petitioner to furnish the name of the vessel to which he was attached, as also the names of the medical officers who attended him at the time of the injury, which he complied with at the earliest day practicable.

Some doubt seems to have pervaded the mind of the Commissioner of Pensions in regard to petitioner's statements in his petition, judging from the fact that on the 4th of August, 1870, Capt. A. M. Pennock, who, it will be recollected, was in command of the fleet at Cairo at the time petitioner received his injury, addresses a letter to the Commissioner in reply to his letter of the 27th ultimo, saying: "To the best of my knowledge and belief the statement made by Jefferson A. French, in his inclosed affidavit dated May 17, 1869, in relation to his injury, is substantially correct."

Other and various requirements seem to have been made from the Pension-Office upon the petitioner, and from the number and character of the affidavits, some twenty or more, on file among the papers of other fellow-officers of the Mississippi squadron, as also of citizens, and medical men who have examined and treated him for his injuries, as stated above, from time to time, it would appear that all these requirements have been met, and they appear to be full, explicit, and corroborative of petitioner's statements.

Among papers on file we also find a letter from the Commissioner of Pensions, under date of April 6, 1872, addressed to J. H. McCohn, special agent, Columbus, Ohio, "inclosing," as it is said, "papers in Mr. French's case for special investigation," with the request "to examine the matter very thoroughly and make a concise and detailed report." In reply to which Mr. McCohn, as such special agent, under date of April 17, 1872, inclosed the affidavits of M. K. Haines, late ensign United States Navy, Mississippi squadron; George I. Moore, ex-United States assessor; Hugh Espy, merchant; Frank Gregory, editor of the Rising Sun Recorder, who had been a seaman in the Mississippi squadron; John Clore, a river pilot; Dr. Basil James, citizens of Rising Sun, Ind., all of whom give in detail in their separate affidavits their knowledge of Mr. French for many years; that he was a hearty, robust man when he entered the service, and that since his alleged injury he had been in poor health, under treatment continuously, unable on account of his injuries to earn a livelihood by manual labor; that he was a temperate man, not addicted to any habits that would aggravate his disease; that his poverty was such that he had been the recipient of aid from the poor-fund of the county, and that he had formerly been

an active, energetic man, a merchant, a trader, and steamboatman for many years, and in one way and another corroborating the statements of the petitioner as fully and completely as it was possible to do, all of which was elicited at the instance of the special agent of the Pension-Office, and, so far as we can determine by the papers, without the knowledge of the petitioner, after which we find the report of said special agent, which is as follows:

"General inquiry establishes the respectability and credibility of all the persons giving testimony. It also elicits that the fact of French's receiving a fall when in the service of the United States, and being seriously injured thereby, was well known, and was generally believed to be the cause of all his troubles; that prior to receiving the injury in question he was noted for his activity in affairs of life and for his apparent vigorous health; that for two seasons following his discharge from the service he was in the South, engaged in cotton-planting, his family residing at Rising Sun, Ind.; that at intervals he would be at home on a visit; that when at home his appearance denoted a continuance of his physical trouble, neck stiff, head leaning to one side, and other symptoms that clearly indicated poor health; that after living in the South the said French returned to Rising Sun, Ind., and has been residing there or in its locality ever since; that since his return his disease has been continuous and of the same character as heretofore mentioned; that since receiving the injury his disease has not been aggravated by any known bad habits;" which report is signed by said J. H. McCohn, special agent.

Several letters from the Pension-Office appear to have been written to petitioner and to his attorneys about as follows: "In view of his immediate enlistment or employment after his discharge as a lieutenant, for duty as a pilot, a most laborious employment, and his pursuit of that duty for more than a year, it seems as though no great disability could have existed. The office cannot fully understand how he could cease to perform the one duty and begin the arduous performance of the other if his disability was as alleged. This condition of things needs some solution before the claim can be allowed." And upon this one point his case was suspended for a long time, and finally rejected.

The affidavits of his brother-officers, pilots, mates, &c., in the same service, state that he was not required to perform "arduous duty;" that it was his knowledge of the river and long experience as a steamboatman that rendered his services invaluable to the Government; that he was furnished with two steersmen or pilots to do the "arduous duty;" that it was his province to "direct and manage;" that he never did attempt to do the "arduous duty" of piloting, but was always furnished with two or more pilots to perform that duty in accordance with his directions; that by virtue of his office he had entire control and command of the vessel, and was responsible for the proper management of the same.

Petitioner finally appeals to Hon. William S. Holman, member of Congress from his district, for his influence and aid in securing to him the pension to which he thinks he is so justly entitled.

On the 26th of January, 1874, in reply to a second letter from Hon. William S. Holman in regard to French's application for pension, as we think before five years had expired, the Commissioner of Pensions informs him that "Mr. French's claim has this day been rejected."

And now, after prosecuting his claim in the Pension-Office for nearly five years, and by its rejection losing all pay for that length of time, he appeals to Congress for relief.

It therefore devolves upon the committee to determine whether his claim is meritorious or not, and whether we shall recommend that a pension shall be granted the petitioner on account of the injuries received by him while in the service and in the line of duty, as shown by the papers on file.

To determine the extent of petitioner's injury and consequent disability, attention is called to the affidavit of Dr. John F. Townsend, who was surgeon's steward on board the W. H. Brown on the 18th of June, 1864, who states therein that when he came on board he "found Jefferson A. French in command; found French in poor health, caused, as I learned, by a fall from the platform of the Illinois Central Railroad depot at Cairo, Ill. Previous to my appointment I did not treat him, but was aware of his being treated by different surgeons in the service; that French resigned his commission as first lieutenant in June, 1864, and on the 23d of the same month was appointed a first-class pilot; that he was not able to perform manual labor, but was an experienced boatman, and was so regarded by the naval officers; that the boat carried two other pilots; that French was not required to perform hard labor—in fact could not; his business was to manage and advise."

Dr. Sullivan, his family physician, who treated him on his return home, soon after his injury, says he treated French for fractured clavicle and injury to the clavicle muscles, received while in Government service in 1863, and that he is still (19th August, 1870) under treatment for the same clavicle affection, from which he has never recovered, and probably never will, as there is partial paralysis of the left side of the neck.

Dr. Gale certifies that French is totally incapacitated for obtaining his subsistence by manual labor, from injury to spinal cord and fracture of clavicle, and that the disability is permanent—fracture of left clavicle, which by its shortened condition deforms his shoulder—but the real cause of his disability is a partial dislocation of the first clavicle vertebra, which by its effect on the spinal marrow causes a partial paralysis of all the nerves arising from the cord. This nervous debility causes a staggering gait, and he is not able to perform labor or walk a mile at any one time.

Dr. Harding certifies that Jefferson A. French is totally incapacitated for obtaining his subsistence by manual labor, resulting from injury to spine and kidneys, and that the disability is probably permanent.

The certificates of Drs. Gale and Harding are attached to and form a part of the papers submitted to Special Agent McCohn, and are explicit as to petitioner's disability.

The papers filed in this case are voluminous, but we have patiently made the investigation, and presented the material facts as they appear in as concise a form as possible, without going into a particular detail of each document, and after a careful review of the same have arrived at the following conclusion: First, that petitioner received the injury as stated; second, that it occurred while he was in the line of duty while in the service; and that the petitioner is entitled to a pension for total disability, and therefore present a bill to that effect, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 20, 1874.—Ordered to be printed.

Mr. MORRILL, of Vermont, submitted the following

REPORT:

The Committee on Public Buildings and Grounds, to whom was referred the following resolution: "Resolved, That the Committee on Public Buildings and Grounds be directed to inquire into the expediency of suspending the expenditure of all appropriations for public buildings not yet commenced, and to cover such appropriations into the Treasury," submit the following report:

This resolution involves several collateral questions hardly less important than the main question itself, and which would, perhaps, more appropriately come under the jurisdiction of other committees. The laws authorizing the construction of, and making appropriations for, public buildings in various States have been made with the belief that they were urgently required for the public service. They have had, in every instance, the recommendation of some of the Executive Departments, and Congress has, by law, declared that they shall be furnished at the present time. If, however, the exigency is sufficiently great, all expenditures for the present year of course can be stopped or suspended. The resolution only refers to buildings not yet commenced, or to those found in the following list:

*Statement showing buildings not commenced, balances of appropriations therefor January 1, 1874, and amounts estimated for fiscal year ending June 30, 1875.**

Location and nature of building.	Balance of appropriation January 1, 1874.	Estimate for year ending June 30, 1875.
Albany, N. Y., custom-house.....	\$247, 233 95	.....
Atlanta, Ga., court-house, &c.....	110, 000 00	.....
Covington, Ky., court-house and post-office.....	99, 355 70	.....
Dover, Del., post-office, &c.....	29, 963 70	.....
Evansville, Ind., custom-house.....	54, 285 70	\$150, 000 00
Fall River, Mass., custom-house.....	96, 800 00	.....
Grand Rapids, Mich., court-house, &c.....	.....	100, 000 00
Jersey City, N. J., post-office and court-house.....	99, 928 00	100, 000 00
Little Rock, Ark., court-house, &c.....	99, 620 75	.....
Memphis, Tenn., custom-house.....	25, 000 00	100, 000 00
Nashville, Tenn., custom-house.....	150, 000 00	.....
San Francisco, Cal., marine hospital.....	58, 789 56	.....
Utica, N. Y., court-house, &c.....	199, 832 30	.....
Washington, D. C., building for Treasury archives, &c.....	.....	500, 000 00
Total	1, 270, 809 66	950, 000 00

* This is a copy of the statement received from the Treasury Department, and omits Lincoln, Nebr.

The whole, it will be seen, amounts to \$1,270,809.66. The necessity for all these buildings may not be equally great, and the Government service would not suffer much more inconvenience by a delay of a year in their construction than it has suffered in the past year, though the localities where the buildings are to be placed might suffer some temporary disappointment. Generally the necessity for the buildings enumerated in this list, with possibly one or two exceptions, is not less than that which has prompted similar structures in other places. The whole amount, it will be seen, is distributed among more than a dozen different States, a part being at State capitals, and is far less than has been appropriated for buildings in any one of several of the larger cities. In fact, the great bulk of all recent appropriations for public buildings will be found to have been absorbed by the cities of Chicago, Saint Louis, New York, and Boston, where large and expensive buildings have seemed indispensable.

Of course, Senators and Representatives whose States are immediately concerned will be reluctant to have appropriations thus made wholly blotted out, or even to say that none of the thirty-eight new bills introduced into the House shall be considered with any favor.

It is undeniable that the revenue for the present fiscal year has thus far fallen below the estimates, and it is to be expected that there will be an excess of expenditures of forty million of dollars at the end of the year, if all the appropriations made for the year are called for, including the sinking-fund account, unless some early measures should be taken to augment the revenue. If a suspension of these appropriations for public buildings alone would remedy the impending deficiency, then the path of duty would be open and clear, and a suspension should at once take place, but much more is evidently required, and it becomes a question of general economy as to what branch of the public expenditure can be most sharply pruned with least detriment to the public welfare, or what resource of taxation can more properly be made available. If these buildings can only be had by an increase of the public debt through an issue of more paper legal-tenders, then they ought to be at once abandoned, for the committee will not take the invidious position of pointing out any other branch of public expenditure as less meritorious whatever, and however obvious may be the facts. But any economy to be effective must have a general application rather than a merely special one.

If the appropriations for public buildings in years past have involved too large an expenditure, the fault cannot be charged to the committees which are supposed to have the subject in charge, certainly not to the Committee on Public Buildings and Grounds of the Senate. No bill has been reported from that committee which did not absolutely fix a limit for the expenditure, and the entire amount reported by them for the past year, excluding \$800,000 for the post-office at Boston, was \$960,000. All of the acts originated by the committee rigidly forbade any greater expenditure than was specially provided for; but Congress has, in the ordinary appropriation bills, frequently made generous additions to the amount. If each House of Congress would fix the rule that no such appropriation should be made except by a separate bill, to be reported by the Committee on Public Buildings and Grounds, with the total amount of expenditure, absolutely limited, and then hold the proper Departments to an absolute compliance with the limitations of the act, all matters of complaint, it is believed, would soon cease; but the miscellaneous manner of getting these appropriations through, for many years, or hitching them on to general appropriation bills, without

the recommendation of the proper committee, fixes the responsibility upon no committee whatever.

Probably few, if any, original appropriations will this year be made for new public buildings in any of the States. Those already begun, it would seem, are imposing a sufficient burden on the Treasury, and the number in progress of construction is as large as can be at present properly looked after by the Department. But the rapid growth of the country constantly increases the demands upon the Treasury for new or larger buildings in all of the States, and also more especially at the seat of government. The addition to the numbers of both Houses of Congress, which has recently occurred, and the increased number of the committees in the House, as well as in the Senate, creates a necessity for a larger number of committee-rooms, and it is obvious that the Court of Claims, now occupying space in the Capitol greatly wanted, must be provided for elsewhere. The City Hall now belongs wholly to the United States, the half owned by the city of Washington having been bought and paid for in conformity to the act of the last session of Congress. This building, standing upon Judiciary Square, can easily be made to accommodate the Court of Claims, and also, by an extension on the north side, to a line parallel to E street, which can be done at a very moderate cost, can be made of ample dimensions to accommodate the Pension Bureau, now crowded out of the Interior Department, and exposed to all the risks of a building by no means fire-proof, situated on C street, and formerly known as the Seaton House. This Bureau, and perhaps something more, from the Interior Department, to relieve the pressure there for more space, would find sufficient room by the proposed extension of the City Hall, and it cannot be doubted that the work should be authorized immediately. The Government is paying extravagant rentals for a large number of buildings here, and there being so few that can be adopted for such purposes enables the proprietors to make almost any terms they please. It is to be wished, therefore, that the building now going forward for the State, War, and Navy Departments, may be completed without unnecessary delay.

The wisdom of the extension of the Capitol-grounds, always undoubted, was made even more conspicuously manifest upon the removal of the buildings from the squares recently purchased. Prior to this extension a full view of the Capitol on all sides was much too circumscribed. The structure is so imposing in its dimensions that it requires a site of proportionately grand extent, and though we have one rarely equaled in its outline and elevation, it is even now too small rather than too large. But these grounds have been so much neglected that it is almost a matter of national reproach that their unsightly and untidy condition should be so long patiently tolerated by Congress. The capabilities of the grounds are very great, almost unrivaled, and now, for the first time since the enlargement of the Capitol, has it been practicable to consider the whole question of grounds—old and new—with reference to landscape arrangements, or to make appropriations for their final improvements. This is a question touching the surroundings of a building many years in process of completion, costing much, and concerning which, upon our hundredth anniversary, a nation of nearly fifty millions will feel a just and patriotic pride. The best landscape-artist of the country should be and will be summoned to our aid, and a person thus skilled will be by far more satisfactory and much more economical than any other, as then all expenditures authorized will be made upon a harmonious plan, and will not be liable to repeated revisions and expensive corrections. The committee will, therefore, at the

proper time ask for a moderate appropriation toward placing the Capitol grounds in a fit condition to be seen by the people who own them. If around the outside of the Capitol it is not kept clean and in proper shape, how should the people expect anything better in the inside?

The roof in the old Capitol, over the Supreme Court, and the roof over the National Statuary Hall, is built of wood, and the safety of the whole building requires that these should at an early day be replaced by something entirely fire-proof. The portions immediately adjacent to the dome ought not to be a moment delayed, and they are even now in such a dilapidated state that all attempts to make repairs are attended by great difficulty. These portions, it is believed, can be made properly fire-proof, so as to place the dome of the Capitol beyond the reach of danger in case of any fire, at an expense of about \$15,000. This, at least, must be done now, and the remainder should only be postponed until the state of the Treasury will warrant an expenditure of about ten times the sum mentioned.

A lot, supposed to be sufficient for the stables necessary for the business of the House of Representatives, has been already obtained, and it may be necessary to remove the stables, now on the northwest front of the Capitol, used for the business of the Senate, when some other convenient site will be required.

There are some other pressing wants which it will not be possible very long to postpone. A proper site for a new library appears indispensable, and the squares adjoining the east side of the Capitol-grounds have many arguments in their favor. Some forty thousand volumes now in the library have no shelf-room, and this, with the annual increase, is creating a great nuisance over various parts of the library, while these books are comparatively inaccessible, and at the same time subject to unusual injury.

A large but plain and substantial building for the reception of the accumulating archives and records of the Treasury Department, and for the Bureau of Engraving and Printing, is more and more manifestly needed.

The completion of the east front of the Treasury building, and the extension of the ground, will require the purchase of some portion of the squares on the east side of Fifteenth street. There is no great urgency about the matter except that wherever the purchase of more ground upon the part of the Government is absolutely inevitable, it would be greatly to the advantage of the Government to have the purchase made at once and before large additions are made to the cost by further expensive improvements on the part of the present proprietors.

The additions to the business of the General Post-Office have been very great within the past few years, and the building now occupied is becoming entirely inadequate for the accommodation of the Department. The most practicable method of relief yet suggested appears to be the proposition to elevate the present building by an additional basement story, and possibly, also, by the addition of an attic story. It is supposed that this can be done without material injury to the style of the structure, and, if so, it is likely something of this sort will be soon required.

If the committee might go so far as to venture an opinion upon the general character of the public buildings which it would be most advisable for the Government to construct, they would not hesitate to say that the style should not involve a large amount for elaborate exterior or interior decoration, but the buildings, when viewed as a whole, should challenge public approbation by the simplicity, grandeur, and beauty of

their proportions. The use for which a public building is designed is the primary consideration, and that, with the differences as to sites and climate, will suggest some variations of architectural style; but, beyond this range of exceptional variations, it would seem not inappropriate to secure such a general unity of design as would enable the public at sight to recognize as *national buildings* all those which may be put up at the expense of the Government. Our public buildings are intended to be indestructible—to endure for centuries—and will better stand the test of time and the scrutiny of coming generations if constructed within the boundaries of the severest artistic taste. Economy would thereby be somewhat promoted—costing less always to be great than to be gaudy—and we should escape having on hand a few years hence architectural structures much like cast-off garments, entirely out of fashion. By this time our experience ought to show what character of buildings will best accommodate the public service, as well as what will be the most durable and produce the best effect at the cheapest cost. Uniformity, wherever practicable, would give a better basis for making contracts, and tend to restrain expenditures from going beyond their proper limitations. The committee are far from commending niggardliness in cost or poverty in design, while urging structures of proper solidity and dignity, and would not attempt to limit the genius of architects to a lame imitation of ancient examples; but the task of surpassing such examples continues from age to age to be one of extreme difficulty. The present rage for Mansard roofs, broken by frequent grotesque protuberances, elevated from the center and from every corner, creates the necessity for unnumbered gutters, which may always be warranted to need repairs; and a building thus fussily roofed furnishes an opportunity for a too-ambitious architect to bestrew the elevations with all the finery of a rambling and eccentric fancy. The committee need not say that they do not refer to, or criticise the works of, any architects at present employed by the Government, whose distinguished merits they very willingly acknowledge, but they refer to the general tendency of the times to indulge in a lavish display of petty decorations. This modern taste may not be coarse, though unquestionably vulgar, and all American architects are compelled to supply to some extent what appears to be so highly appreciated. The result is, too often, buildings without grandeur but with a superabundance of minor beauties, soon destined, from the smoke and dust of cities, or the wear and tear of time, to be only a realization of what is best known by the term “shabby-genteel.” Our conclusion would therefore be, wherever it becomes necessary in any State for the General Government to erect public buildings—

First. That utility shall be the foremost consideration.

Second. That they shall have some general unity of character.

Third. That they shall be stately and fine in proportions, rather than rich and unique in detail.

Finally, the committee are persuaded that the expenditures for public buildings in the present exigency for economy should be cut down with as much severity as any other expenditures, but that they ought not to be singled out as the least meritorious of all and wholly denied in a lump. The wants of the government of a great nation cannot be measured by the half-grown wants of infancy, and, with the sincerest effort to maintain the sternest economy, we must meet the present requirements for reasonable public improvements, and meet them with the prospective growth of the country constantly in view, unless we are willing to find our public edifices, in a single decade, insufficient and too small to answer the purposes for which they were originally designed.

We, therefore, do not think it would be expedient to suspend, in the language of the resolution referred to the committee, "all appropriations for public buildings not yet commenced," but instead would recommend the postponement of a part of them for one year, and curtail more largely appropriations for the ensuing year.

[No bill accompanies this report, because since it was written the committee have learned that the Committee of the House on Public Buildings and Grounds have proposed a bill mainly carrying out the suggestions here made.]

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IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

R E P O R T :

The Committee on Claims, to whom was referred the petition and papers of Benjamin D. Lakin, praying repayment of \$1,000 paid by him for a substitute, submit the following report :

The substance of the petition is, that petitioner was drafted into the military service of the United States on the 28th of September, 1864 ; that one John Smith was mustered into the service as a substitute for said Lakin ; that through the mismanagement of the Government officials he was retained in the service, performed the required duties until discharged by reason of bad health, &c., and he therefore claims \$1,000, the amount, as he says, paid by him to said Smith as a substitute.

From the papers it appears that petitioner was drafted into the service as stated.

Also, that Smith was, on the 10th of October, 1864, mustered in as petitioner's substitute, and served until his death, April 30, 1865.

It also further appears that, under Special Orders No. 61, dated February 7, 1865, Lakin was, on the 14th of that month, mustered out of the service. He was drafted for one year.

This claim was submitted to the Adjutant-General United States Army, and rejected as not coming within the provisions of the acts of February 28, 1867, or March 1, 1869, providing for the return of commutation money.

And this is all the evidence ; commenting upon which, we think this claim should be rejected upon several grounds :

1. There is no testimony aside from petitioner's statement—and that not very clear in its account—that he paid the substitute \$1,000, or any other sum.

2. There is nothing whatever tending to support the statement that he was retained in the service by reason of the "mismanagement of the Government officials." His detention may have resulted from his own want of diligence, the delay or want of attention to duty on the part of the substitute, or both. There is as much to support this latter hypothesis as that of the petitioner. Then, too, he had the benefit of the substitute's service from February 14 to April 30, 1865.

3. There is no law or regulation which would require the Government to pay the \$1,000 even if petitioner paid it ; nor any sum beyond \$300. And this liability arises only in the cases contemplated by the acts of February 28, 1867, and March 1, 1869.

But there can be no pretense that petitioner comes within these provisions, for he was not twice drafted. Nor does it appear that, under

the rules and decisions of the War Department, he was "entitled to discharge from the obligation to render personal service under the draft."

Nor, again, is there anything to show that he was not "legally liable to the draft."

In any view of the case the claim should be disallowed, and the committee ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1874.—Ordered to be printed.

Mr. BOREMAN submitted the following

REPORT:

[To accompany bill S. 44.]

The Committee on Territories, to whom was referred the bill (S. 44) to establish the Territory of Pembina and to provide a temporary government therefor, have had the same under consideration, and respectfully submit the following report:

The same bill was before this committee at the second session of the Forty-second Congress, and, on February 8, 1872, a favorable report was made thereon, as follows:

It is proposed by this bill to establish and provide a temporary government for a new Territory out of that part of the Territory of Dakota lying north of the forty-sixth degree of north latitude.

The present Territory of Dakota contains 150,932 square miles, being in extent about 400 miles from north to south, and something less than that in width from east to west. It appears from the report of the late census that in 1870 it contained a population of 14,181, exclusive of Indians, but it is now believed, from the best evidence your committee have been able to obtain, that at this time its population numbers more than 25,000.

The more populous and growing settlements are in the extreme northern and extreme southern portions of the Territory, respectively, the intervening region, except immediately on the eastern border, being in great part uninhabited and without roads or other avenues of communication. There being no direct route of travel between these distant settlements, those residing in the region of Pembina, or indeed in any part of the more northern sections of the Territory, in going to Yankton, the capital, as many of them must necessarily do in the transaction of business with the officers and courts of the Territory, are compelled to travel a distance of from one thousand to fifteen hundred miles, and this by the nearest practicable route. And the same is the case with the judges and other officers in going from the capital to attend to their respective duties in the northern portions of the Territory.

The Territory for which it is proposed by this bill to provide a government is a parallelogram, extending from Minnesota, on the east, for something less than four hundred miles, to Montana, on the west, and from the British possessions, on the north, two hundred miles to the boundary of the remaining Territory of Dakota, on the south, and has an area of about seventy thousand square miles. It contains a population now of not less than 10,000, having received considerable accessions by immigration since the taking of the late census; and it may be added, when separated from Dakota, will leave the latter with a population as large as the whole Territory had in 1870. The contemplated Territory will have a larger population than many of the Territories heretofore established had when they were organized, as may be seen from the following:

Mississippi, organized in 1789, population	8,850
Indiana, organized in 1800, population	5,641
Michigan, organized in 1805, population less than	4,000
Wisconsin, organized in 1836, population	7,000
Minnesota, organized in 1849, population	6,077
Washington, organized in 1853, population	1,201

Dakota, organized in 1861, population.....	4,837
Nevada, organized in 1861, population.....	6,857
Arizona, organized in 1863, population.....	5,000

The climate and seasons of the new Territory are about the same as in the adjoining State of Minnesota. The land lies beautifully, being comparatively level, and nearly every part of it being susceptible of cultivation. The soil is good, and produces all the grains, vegetables, and fruits common to the Northwestern States. The Northern Pacific Railroad, located as it is through the entire length of the Territory from east to west, and being now in process of construction, will soon supply the means of direct and speedy communication with all parts of the country. And the present indications are that this Territory will continue to rapidly improve and increase in population as it has for two or three years past, thereby extending and adding to the substantial prosperity and wealth of the nation; and it is believed that these desirable results will be greatly facilitated and rendered more certain by the establishment of the temporary government contemplated by this bill.

Since making the above report the Northern Pacific Railroad has been completed to Bismarck, on the Missouri River, a distance of two hundred miles from the western boundary of Minnesota.

Bismarck is a considerable town, and many other small towns and villages have sprung up along the railroad and elsewhere in the Territory; large numbers have been added to the population; immigration still continues, and no doubt is entertained that with the opening of the present spring the influx of population will exceed that of any preceding season.

The following extract from a speech delivered in the House of Representatives on the 14th instant, by Hon. M. K. Armstrong, present Delegate from Dakota, your committee believe is a fair and reliable statement of the present condition of that portion of Dakota for which the bill under consideration proposes a separate organization:

Two hundred miles of the Northern Pacific Railroad have been pushed westward across that Territory from the fertile valley of the Red River to the navigable waters of the Upper Missouri. Two newspapers are published in the proposed Territory, and stirring and enterprising towns have been built up at Fargo, Jamestown, and Bismarck on the said railroad, while immigration and settlement are rapidly filling up the accessible river valleys. Steamboats navigate the Red River nearly two hundred miles into the proposed Territory, returning with thousands of tons of freight for the Hudson Bay settlements; while along said stream in Dakota new towns and mills are being established. Nearly four hundred miles of telegraph line are in operation, and at Pembina, Grand Forks, Fargo, and Richville quite a trade is already carried on in the way of shipping and reshipping freights. United States courts are held at Fargo, Bismarck, and Pembina, and a United States land-office has recently been established at the former place, while the settlers are urgently petitioning for a land-office at Bismarck to accommodate the increasing settlements in the Missouri Valley. Many large steamboats ply for several hundred miles through the proposed Territory on the waters of the Missouri, and pass far above the mouth of the Yellowstone into Montana, carrying Government freight for the forts and agencies, and mercantile goods for the mining districts. Already several thousand people have gone into this northern territory, and are preparing farms, homes, and villages, in anticipation of the favorable action of Congress upon this bill.

It is proper, also, to add that the legislature of Dakota have twice—in 1871, and again in 1873—memorialized Congress in behalf of the establishment of this new Territory, in which they state with great force the facts which induce them to do so, and urge it as a matter of justice to those inhabiting the proposed Territory, as well as of interest and advantage to the country generally.

To meet the objection that the establishment of another Territory will entail additional charge on the Treasury, the committee submit the following communication from the Secretary of the Treasury:

TREASURY DEPARTMENT,
Washington, D. C., January 17, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 15th instant,

requesting to be informed of "the charge upon the Treasury for each of the respective existing Territories, and the items that make up the same."

In reply, I inclose herewith a statement showing the expenditures under heads of appropriations on account of each Territory during the fiscal years 1872 and 1873. The items of expenditure for fuel, furniture, repairs, lights, &c., are so numerous that it is not practicable to give them in detail.

I am, very respectfully,

WM. A. RICHARDSON,
Secretary.

Hon. A. I. BOREMAN,
Chairman Committee on Territories, United States Senate.

Expenses of territorial government.

Territories.	Fiscal year 1872.			Fiscal year 1873.		
	Salaries.	Ordinary expenses.	Total.	Salaries.	Ordinary expenses.	Total.
ARIZONA.						
Salaries: governor, judges, &c.....	\$13,655 26	.....		\$14,906 59	.....	
Legislative expenses.....		\$4,325 12			\$1,000 00	
Contingent expenses.....		2,000 00			20,758 00	
Salary of interpreter and translator.	624 99	.....			.....	
			\$20,605 37			\$36,664 59
COLORADO.						
Salaries: governor, judges, &c.....	13,300 00	.....		13,212 30	.....	
Legislative expenses.....		20,000 00			.....	
Contingent expenses.....		1,000 00			838 78	
			34,300 00			14,051 08
DAKOTA.						
Salaries: governor, &c.....	13,600 96	.....		13,453 30	.....	
Legislative expenses.....		85 91			24,382 07	
Contingent expenses.....		1,000 00			1,000 00	
			14,686 87			38,835 37
IDAHO.						
Salaries: governor, &c.....	13,876 39	.....		13,500 00	.....	
Legislative expenses.....		7,679 76			20,144 71	
Contingent expenses.....		662 50			1,657 08	
			22,218 65			35,301 79
MONTANA.						
Salaries: governor, &c.....	13,820 65	.....		13,500 00	.....	
Legislative expenses.....		28,386 10			2,967 59	
Contingent expenses.....		1,000 00			1,000 00	
			43,206 75			17,467 59
NEW MEXICO.						
Salaries: governor, &c.....	16,730 10	.....		13,500 00	.....	
Legislative expenses.....		19,768 74			2,849 23	
Contingent expenses.....		1,000 00			1,000 00	
			37,498 84			17,349 23
UTAH.						
Salaries: governor, &c.....	14,106 25	.....		13,198 90	.....	
Legislative expenses.....		22,197 18			.....	
Contingent expenses.....		393 75			1,000 00	
			36,697 18			14,198 90
WASHINGTON.						
Salaries: governor, &c.....	12,739 01	.....		15,388 29	.....	
Legislative expenses.....		28,824 99			.....	
Contingent expenses.....		1,000 00			1,400 50	
			42,564 00			16,768 79
WYOMING.						
Salaries: governor, &c.....	13,162 60	.....		13,651 65	.....	
Legislative expenses.....		16,998 70			2,700 00	
Contingent expenses.....		913 75			942 08	
			31,075 05			17,293 73

Aggregate expenditure for the nine Territories for two years, \$490,803.78. One-ninth of the above is the average expenditure for one Territory for

two years, and is \$54,533.75 $\frac{1}{2}$. One-half of the last named sum shows the average annual expenditure of one Territory, and is \$27,266.87.

This communication and statement shows the separate and aggregate expenditure out of the Treasury for all the Territories for two consecutive years, thus including the expenses of a session of the legislature in each, and enabling us to fix the average annual charge on the Treasury for a territorial government. This average, as may be seen above, is \$27,266.87, and is a small outlay for the benefits realized from such a government.

It must be conceded that the development and growth of this Territory will tend to add to the wealth and prosperity of the nation, and it can be no less apparent that the thousands of hardy and enterprising people within its boundaries, who, by the sacrifices, energy, and industry indispensable to success in border-life, are thus contributing to the resources of the country, have a right, even though it necessitates a small annual draught on such resources, to demand a recognition of their situation, wants, and interests by the establishment of a local government that will be accessible for the transaction of their necessary business at only a reasonable expenditure of their time and means.

The committee, therefore, report back said bill with some verbal amendments, and recommend that the same do pass.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1874.—Ordered to be printed.

Mr. SCOTT, submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of A. J. Tynes, of Nashville, Tenn., praying compensation for buildings, &c., destroyed by military order during the war, have considered the same, and submit the following report :

The petitioner was the owner of a small tract of land containing twelve acres, situate on the Hillsborough turnpike, about three miles from Nashville, having thereon a frame dwelling-house, stables, and other out-buildings, shrubbery, fruit and ornamental trees. He occupied the house and premises in December, 1864, prior to the battle of Nashville. He thus states his case in his petition.

On or about the 1st of December, 1864, the Fourth Army Corps, under command of Brig. Gen. Thomas J. Wood, United States Army, established a line of defenses against the rebel army under command of General Hood, near said premises, throwing out pickets to the front and establishing a picket-line through the yard and in immediate vicinity of the house, where they remained for several days, entirely destroying the fencing, which they used for fuel to keep themselves from freezing, the weather at that time being cold and inclement, and no other wood or timber being in reach. On or about the 10th of December, 1864, the enemy, under General Hood, made an advance upon the Federal line, driving the picket-line back about one hundred or one hundred and fifty yards from the house. Orders had been given the pickets by General Wood, commanding the Fourth Army Corps, through Gen. D. S. Wagner, commanding Second Division, to set fire to all buildings in the event of their being driven back from their position, to prevent the enemy from making a lodgment behind them, and using them for their sharp-shooters. In obedience to orders, M. Z. Dawson, major of the Fifteenth Ohio Volunteer Infantry, and afterward colonel of the One hundred and eighty-seventh Ohio Volunteers, and brevet brigadier-general, acting in the capacity of chief of outposts and pickets, set fire to a number of dwellings, which were burned to the ground, and attempted to fire that of your memorialist, but the house being new and the scouts hotly pressed by the enemy they failed to burn it. Finding General Wood on the Hillsborough turnpike, your memorialist inquired of him as to the fate of his residence, and was informed that if it failed to burn down he would destroy it in some manner, to prevent the enemy from making a lodgment behind it, or using it as a cover for sharp-shooters. Very soon thereafter an order was issued by General Wood, which was carried into execution, directing two batteries situated on either side of the Hillsborough turnpike to be turned upon the house. The dwelling resisted the effects of the artillery fire for a long time, and it required a constant fire from the batteries situated within range to complete its destruction. After the enemy had been driven back, the Federal pickets again advanced and proceeded to totally destroy the contents of the house remaining, and which had not been wholly destroyed by the bombardment. The dwelling-house and its contents and the outhouses proved a total loss. In addition thereto, much of the personal property, including stock and grain and fencing were used by the Army.

Your memorialist further represents that, in obedience to an order of Maj. Gen. George H. Thomas, a board of assessors convened at Nashville, Tenn., headquarters Department of the Cumberland, in the spring of 1865, for the purpose of assessing the

damages in the destruction of the residence, household furniture, wearing apparel, out-buildings, &c., and other property used by the Army; and the board, after hearing the testimony submitted, made a report and assessed the damages at \$16,147.78.

To compensate him for this, he prays an appropriation of the sum of \$22,340. He avers his loyalty, and it is sworn to by other witnesses.

It is unnecessary to make any detailed examination of the items entering into the aggregate awarded by the board of inquiry or set out in the bill accompanying the petition, or to point out the discrepancies between the values affixed to the same items in the two estimates, as the case is disposed of upon other grounds.

The petitioner's own statement of his case at once suggests that his losses, however severe they may be to him, resulted, not from a deliberate appropriation of his property to public use by authority of the Government of the United States, but by its destruction in the actual conflict of war. There may have been some damage resulting from occupation simply for a few days before the battle began, but this would be very small in comparison with that resulting from the training of artillery upon the house purposely to destroy it; and if it were a proper subject of separate compensation, the data is not furnished upon which it could be estimated.

The other testimony in the case makes out more clearly that the destruction of the house and the property in it was the result of actual conflict, and that it would be impossible to tell what portion of the personal property used by soldiers was taken by United States troops and what by the confederate forces, as both occupied the grounds during the time the losses were suffered.

The nature of the "order" relied upon, and the circumstances attendant upon its execution, may be gathered from the testimony of Major Dawson, a portion of which we quote:

He states that, during the month of December, 1864, he was major of the Fifteenth regiment Ohio Volunteer Infantry, and detailed upon the staff of Brig. Gen. Thomas J. Wood, commanding the Fourth Army Corps, Military Division of Tennessee. That, acting in the capacity of chief of outposts and pickets, I established a line of pickets in front of the Fourth Army Corps, crossing the Hillsborough turnpike, near Nashville, Tenn., and at a point near the residence of Mr. A. J. Tynes. There being a number of dwellings at that point on the turnpike, orders were given the pickets to set fire to all buildings in the event of their being driven back from their position, and burn them to the ground, in order to prevent the enemy making a lodgment behind them and using them as a cover for his sharp-shooters. Said order was given by Brig. Gen. Thomas J. Wood, commanding Fourth Army Corps, (a general order under such circumstances, the wisdom of which was apparent, and particularly so in this case on account of the peculiar formation of the ground.) On or about the 10th of December, 1864, the enemy assaulted our lines and the pickets were driven in, and, in accordance with the order received from General Wood, all the houses on that part of the line were set on fire. Some of the buildings were burned to the ground. For some reason the building owned by A. J. Tynes did not burn. The fire either went out or was extinguished by the enemy, who took possession of the house, and used it for a cover for his sharp-shooters. The artillery on that part of the line was then used to do what the fire had failed to do, viz, to batter down and destroy the building. I know nothing of the extent of the destruction of said building or the property within it, but from the number of shots fired at it, and the persistent effort of the artillerymen to do what the pickets had failed to do, I think the destruction must have been nearly complete.

Without repeating their testimony in detail, the facts herein stated are gathered from the affidavits of E. P. Core, of W. K. Dobson, David A. McGredy, of the petitioner himself, his wife, and others.

The petitioner occupied his house until Saturday, December 10, and says his furniture and goods were then undisturbed. On that day the firing began. Our picket-lines were driven back, and orders were given

to fire the buildings of Mr. Tynes and others. Mr. Tynes's did not burn. The rebels were on his grounds from Saturday till Thursday following, as testified by Mr. McGredy, and during this time the house was literally riddled by balls and shell and the furniture destroyed, one witness stating that he counted sixty-one bullet-holes and one cannon-shot in one room, and that that was about an average for the other rooms.

However calamitous it may be to individual sufferers upon the theater of war to bear the losses incident to the actual conflict of contending armies, the rule is too well settled to be now disputed that for such losses the Government does not recognize its liability to compensate the citizen. The facts of this case bring it within that rule, and however we may regret the hardship presented by such cases, and the impossibility of redress, we can but apply the rule as we find it established, and ask to be discharged from the further consideration of this petition.

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IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill H. R. 345.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 345) to relieve certain persons therein named, late members of Company K, Fifty-eighth Regiment Illinois Volunteer Infantry, from the charge of mutiny, submit the following report:

The evidence shows that the persons named in the act were tried by court-martial upon charges of mutiny, convicted and sentenced to imprisonment, and dishonorable dismissal from the Army, &c. The charges upon which they were tried arose from the fact that their terms of service had expired, and their demand for muster-out being refused, they declined further military obedience. It does not appear that the specification of mutiny "*when the regiment was in line of battle, ready to move upon the enemy,*" was in the least sustained.

General R. W. Healy, late colonel of the Fifty-eighth Illinois Volunteer Infantry, in a letter accompanying the papers, fully explains that the alleged mutiny and disobedience of orders was not impelled by cowardice, vice, or defiance, but had its origin in what these enlisted men honestly believed to be their right; that they had all served their full term of three years from the date of muster, before the overt acts were committed; and that they had, during all of said term, proved themselves brave, faithful, and obedient. General Healy, therefore, recommends a revocation of their sentence.

This recommendation from a commanding officer, whose opportunities to know all facts and circumstances surrounding the case, is entitled to consideration. Accompanying the papers is a petition of Mrs. Lydia J. Harrington, of Galesburgh, Illinois, widow of Silas B. Harrington, one of the soldiers named in the act, and now deceased, which, among other statements and appeals, charges that these enlisted men were actuated by the belief that their muster-out was denied them because, if so mustered out, some of the officers might and would, as a necessary result, lose their positions. There is perhaps a show of reason in this statement, and it is highly probable this was the main incentive to their injudicious and improper conduct.

Mrs. Harrington, honoring her husband's memory, urges that her children and herself may be relieved from the attending disgrace of their father's dishonorable dismissal from the service, considering his long and faithful service and participation in hard-fought battles. The same disgrace following equally the families and friends of each person named in the act, and the circumstances of each being identical, your committee is of opinion that the record may be cleared of its stain upon the character of the persons named, without prejudice to the country at this time, and therefore recommend the passage of the act.

(No report of House committee is with the papers.)

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill H. R. 1404.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 1404) for the relief of William F. Kerr, report as follows:

The evidence in this case shows that a horse and equipments, of the value of \$131, belonging to William F. Kerr, private Company D, Third Indiana Cavalry, and used by said Kerr, were abandoned at Dinwiddie Court-House, Virginia, June 25, 1864, by order of his commanding officer, and were totally lost, while upon a forced march. The Third Auditor reports the claim as equitable, but, for want of provision of law, he cannot allow the same.

Your committee, coinciding with the report of the House Committee on War-Claims in this case, is of opinion that the claim is just, and recommends the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT:

[To accompany bill H. R. 725.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 725) for the relief of James C. Livingston, late a private in Company E, Third Regiment Iowa Volunteer Infantry, having had the same under consideration, submit the following report:

That, from the letter of the Adjutant-General, it appears claimant was mustered into the United States service June 8, 1861, for a term of three years; re-enlisted as a veteran January 4, 1864, and was transferred to Company A, Second Iowa Veteran Volunteers, and continued to serve until June 25, 1865, a term upward of four years. It further appears from his own affidavit, corroborated by a sworn statement of his captain, that, on the 25th of June, 1865, he received a letter from his father that his (soldier's) mother was lying at the point of death and asking him to come home; that he applied for furlough, but was denied; that he then went home without permission, was home about one week, attended the death and burial of his mother, and then immediately returned to his command at Louisville, Kentucky, on the very day his company were mustered for discharge; that his captain applied for his honorable discharge, which was refused by the mustering officer. The soldier swears he never attempted nor intended to desert, and his captain gives him the honorable name of a good, true, faithful soldier, with this single exception.

The committee therefore recommend the passage of the bill without amendment.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT:

[To accompany bill H. R. 1776.]

The Committee on Military Affairs, to whom was referred bill (H. R. 1776) for the relief of George Yount, late a second lieutenant Third Regiment Missouri Volunteers, having had the same under consideration, submit the following report:

The evidence in this case is clear and satisfactory, and shows that the claimant, George Yount, was duly commissioned a second lieutenant Third Missouri Volunteers 24th March, 1863, but while making an assault upon the enemy's works at Vicksburgh, Miss., was severely wounded, so as to disable him to perform duty; that he was not mustered as such second lieutenant until the 7th day of March, 1864, but that a vacancy existed on the 1st day of September, 1863, into which he could have been mustered but for the wound from which he was suffering.

The committee therefore recommend the passage of the bill.



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THE HISTORY OF THE UNITED STATES

By John Jay

The Author's Preface to the Reader

REPORT

By John Jay

On the subject of the proposed Union between the United States and Great Britain, as contained in the late Treaty of Commerce, signed at London the 11th of September 1794.

By John Jay, Esq. of New York, one of the Commissioners of the United States, charged with the negotiation of the said Treaty.

Printed by J. B. Colver, at the Office of the American Museum of Natural History, No. 100, Broadway, New York.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT:

[To accompany bill H. R. 2094.]

The Committee on Military Affairs, to whom was referred bill (H. R. 2094) for the relief of William A. Snodgrass, late first lieutenant Company H, Thirty-ninth Ohio Veteran Volunteer Infantry, having had the same under consideration, beg leave to make the following report:

The committee find the facts in the case sufficiently set forth in the House report, and adopt the same as the report of this committee, which is in the words and figures following, to wit:

Lieutenant Snodgrass commenced his service in the Army as a private soldier with his regiment in 1861, and served until the close of the war.

On the 7th of June, 1865, his regiment was ordered from Washington, D. C., to Louisville, Ky., and while *en route* it passed within twelve miles of his home. It seems, according to the sworn statement of Lieutenant Snodgrass, that he had important papers to execute and acknowledge, and being informed by his commanding officers that he could obtain no regular leave, he went, on an informal leave, from Parkersburgh to his home in Marietta, Ohio, by railroad, attended to his business, and immediately proceeded by rail to Louisville, Ky., to join his regiment, where he would have arrived before his regiment, had he not been delayed by a train being thrown off the track—the regiment having traveled from Parkersburgh to Louisville by steamer. He was absent from his regiment from the 8th to the 13th of June, 1865; arrived in Louisville the day after his regiment. For this absence he was tried before a court-martial June 20, 1865, and convicted and sentenced to be dishonorably dismissed the service of the United States, although the court was not unanimous in this sentence.

Daniel Weber, his colonel, says Lieutenant Snodgrass invariably conducted himself as a good and obedient soldier, conspicuously brave in action, and ever ready to perform any duty assigned him. He was one of the best men in the regiment. The facts in relation to his absence from his command which resulted in his being tried by a court-martial are as he states them, and taking into consideration the circumstances of his absence and its very short duration, as well as the splendid record of his service for four years, the sentence of the court-martial was particularly severe, and justice to a gallant soldier requires that he should have the relief asked for.

Gov. Edward F. Noyes, of Ohio, formerly colonel of the Thirty-ninth Regiment Ohio Infantry, concurs in this recommendation of Colonel Weber.

Therefore they recommend the passage of the bill without amendment.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of John Hannegan, in his own right, and as administrator of the estate of William Hannegan, praying compensation for work done, &c., submit this report:

On the 25th day of September, 1867, William and John Hannegan (William since deceased) entered into a contract with the United States to furnish material and do the work necessary in excavating the prism and constructing the embankments of the canal for the improvement of the Des Moines Rapids, in the Mississippi River, upon terms and conditions in said contract provided.

They proceeded with said work until in October, 1868, when the officer in charge, and, as the Government claims, under and in virtue of the terms of said contract, declared the same, by reason of alleged defaults of the contractors, annulled—took control of the improvement and relet the same.

And now petitioners insist, upon fourteen separate and distinct items, that they are entitled to \$121,243.62, less the sum of \$21,548.76, (which they admit was afterward paid to their hands,) or a balance of \$99,694.86. This claim was filed in the Forty-first, then in the Forty-second, and now in this Congress, but no report or action has ever been made or had thereon.

For the faithful performance of this contract, petitioners entered into the usual and required bond. It seems that an action was brought thereon by the United States, and pending this a bill was introduced to discharge them and their securities from all liability to discontinue said action, and also to allow them to proceed in the Court of Claims for any part of the per centum reserved to the Government under said contract. This passed the House; referred in the Senate to the Judiciary Committee; reported favorably; recommitted; again reported for passage, and the Senate closed without action. At the next session an act was passed releasing principals and sureties from the bond, and discontinuing said suit at law. (16 Stat., 700.)

The claim as now presented is made up of the following items:

No. 1. For the 15 per cent. of estimated quantity and value of work done and materials furnished, reserved from each estimate	\$24,197 34
No. 2. For balance due as per estimates, not included in the 15 per cent. reserve	11,896 28
No. 3. For cutting ice and bailing outside one and one-half miles	5,000 00
No. 4. For 200 yards of first-class masonry, reasonably worth \$16 per yard	\$2,800 00
Estimated arbitrarily at \$5.25 per yard	1,050 00
Difference due contractors	1,750 00

No. 5. For 20,000 cubic yards slope-wall, reasonably worth \$2.	\$40,000 00
Estimated at \$1.35	27,000 00
Difference due	\$13,000 00
No. 6. For railroad-tracks laid, bridges put in position, and other incidental expenses incurred in preparing for prosecuting said work, up to the 26th of October, 1868	15,000 00
No. 7. Damages sustained by the contractors through neglect of the Government officers to cross-section the work after spring floods, which they were bound to do under the contract.....	10,000 00
No. 8. For use and wear of tools arbitrarily seized and used by the United States, 52 days from October 24, 1868	8,000 00
No. 9. For moving fences along the line of the canal.....	200 00
No. 10. For cutting muck-ditches not included in contract.....	2,000 00
No. 11. For removing earth washed into excavation, at Sandusky, and not estimated	2,000 00
No. 12. For building guard-wall into ripraps at Nashville, not required by contract.....	2,000 00
No. 13. For 1,200 cubic yards stone quarried, by order of engineers, at Nashville, and then excluded from work by engineers and not estimated.....	1,200 00
No. 14. For shifting line of canal 25 feet farther into river, by order of the engineers, from its first location by them.....	25,000 00
	121,243 62
Deduct amount paid by Wilson to petitioner's laborers.....	21,548 76
For balance due from the United States	99,694 86

That the action of Congress, when the relief above referred to (16 Stat., 700) was granted, and the facts may be more readily seen and understood, we quote as follows from the report of the House Judiciary Committee, (Forty-first Congress, No. 30, March 1, 1870.)

Mr. Kerr, from the Committee on the Judiciary, made the following report :

The Committee on the Judiciary, to whom was referred the memorial of Charles Cooper, Goshom A. Jones, Jerome Rowley, William Hannegan, and John Hannegan, asking for certain relief, respectfully report that they have had the same under consideration, and have taken testimony touching the matters therein set forth, and find the facts to be as follows :

In September, 1867, William and John Hannegan became contractors under the Government for the improvement of the Des Moines Rapids of the Mississippi River, for the stipulated sum of \$710,999, and the other memorialists became their sureties in a bond in the penal sum of \$175,000 conditioned for the faithful performance by them of their contract. The engineer in charge of the improvement was and now is J. H. Wilson, lieutenant-colonel Thirty-fifth Infantry and brevet major-general United States Army, and by him the work was originally estimated to cost the Government about \$1,200,000. At the time the contract was made with the Hannegans, the next lowest bid to theirs was \$929,168, and the highest was \$1,527,890. In October, 1868, after having done work under their contract amounting to about \$150,000, the contractors became embarrassed and unable vigorously and properly to prosecute the work, and then their contract was, in the judgment of the committee, very properly declared forfeited and annulled by the engineer in charge, General Wilson, and the work was soon after let by him to other contractors. It is alleged that all this was done without the consent of the contractors and while they were in good faith prosecuting with vigor the work on the improvement. Under the contract, the Government was entitled to retain in its hands fifteen per centum for the estimated amount of work done, as additional security for its faithful performance. The memorialists allege and the committee find that a sum approximating \$24,000 was so retained out of the estimates, and was declared forfeited to the Government, but afterward, in October, 1868, the engineer paid out of that \$24,000, to certain employes of the contractors, for work done by them in that month, about \$10,000, leaving a balance of about \$14,000 of the fifteen per centum to stand as forfeited to the Government. It is now claimed by the Government that the contractors and their sureties should be compelled to re-imburse the Government in the sum of said \$10,000, and to that end an action has been instituted in the United States district court for the northern district of Ohio against the contractors and their sureties. The defendants claim that it would be unjust and manifestly inequitable for the Government either to compel the repayment of the \$10,000 so advanced to employes of the contractors by the engineer, or to withhold from the

contractors the remaining \$14,000 of the reserved fifteen per centum. They therefore pray to be relieved by act of Congress from that bond and the pending action on the same, and to have said \$14,000 paid to the contractors for the use of the sureties, who claim to have made large advances to them to enable them to prosecute the work, which have not been repaid.

They rest their claims chiefly on the following allegations:

1. That the Hannegans made the contract at too low a price, on the faith of the report of the engineer that the water in the river where the embankments were required to be built was only from eight to twelve inches deep at ordinary low water, when in fact it was from two to twelve feet deep, and that thereby the cost of construction was very greatly increased and the time required greatly lengthened, and the danger to exposure and injury from the changing of seasons and conditions of the river greatly augmented, and that the work was in fact from time to time greatly retarded and injured in the ways aforesaid.

2. That during the fourteen months the contractors were engaged on the work, there were more instances of high water in the river, and of longer duration, than was usual for similar periods, whereby they were both directly damaged and seriously hindered in the work.

3. That work was exacted of the contractors not specifically or equitably required by the contract, for which no sufficient allowance was made them.

4. That the *estimates* were not fully and fairly made from time to time, whereby they were deprived of as full payments as they were entitled to have, and thus also were embarrassed in the prosecution of the work.

After the examination of such evidence as was furnished by the memorialists, the committee sent for and examined, under oath, the engineer, General Wilson. His testimony, which was quite full, and appeared to be eminently intelligent, fair, and just, sustains the allegations of the memorialists in part only. The third ground for relief is not at all sustained by him, and the fourth only in small part; but the first and second are more fully sustained. Concerning the entire good faith of General Wilson as an officer of the Government in the discharge of his duties, there is no room for doubt. The contractors appear also to have acted in good faith, and to have done as well as they could with the means at their command. The committee deem it proper to quote, for the information of the House, the material parts of the testimony of General Wilson on the most important points.

"Question. With the knowledge you now have, do you consider that they (the contractors) had a sufficient and remunerative price under their contract for doing that work?—Answer. I know they had not; I can state to the committee plainly that it is going to cost the Government just about the original estimate to do this work—*four or five hundred thousand dollars more than they contracted to do it for.*

"Q. Is the cost to which the Government will be subjected but the reasonable cost of the work?—A. Yes, sir.

"Q. Will the Government be subject to loss beyond the fair cost by their inability to do the work at their insufficient price?—A. It will necessarily cost the Government *something* more than if the contract had been originally let at a reasonably remunerative price, which would have enabled the parties taking it to finish the work. Frequent changes add to the expense; the work is necessarily left in a bad shape; new contractors will not take hold of it except at advanced rates, and by the time a work is done, which has been carried on in this way, it costs more than if it had been let at reasonable rates at the beginning.

"Q. What was the actual depth of the water there—the low-water depth?—A. Along the line of the embankment it would not average three and a half feet, and I think not so much as that; between two and three and a half feet, I should say; the precise average it would be impossible for me to mention. In places it is eight or ten feet deep; in other places only a few inches; this is, I mean, in low water. One thing it might be well to state, somewhat in justification of their complaints, to some extent; that is, we have not had low water any season since they went there. We have thought that we could confidently rely upon having dead low water two seasons out of three; but such has not been the case for the last three years.

"Q. Can you state whether the successful prosecution of the work was, or was not, prejudicially affected by the unusually high water which prevailed during the time they were employed upon this work?—A. It may have been somewhat prejudicially affected by it, but not nearly so much as it has been since, under later contractors. But even under their contract the water was generally higher than it was when the survey was made; but this was a circumstance which they knew was likely to occur."

He further states that the estimates were always very fairly and fully made, except for one month, when, by the act of one of his assistants, the estimate was made somewhat too low, contrary to his express orders.

After full consideration of all the evidence, and of the circumstances attending the making and performance of the contract, and the conduct of the parties, giving con-

trolling influence to the testimony of the engineer, the committee feel in duty bound to recommend as follows:

1. That the prayer for the payment to the contractors of the balance of the reserved fifteen per centum be denied, but that they be permitted, as a matter of justice, to litigate their claim to recover the same before the Court of Claims.

2. That the prayer for relief against the bond and the pending action should be granted, and the committee, therefore, recommend the passage of the accompanying bill. The committee believe that, to the extent indicated, the evidence clearly establishes a proper case for relief, by the action of Congress, and that, as to the reserved per centum, the Government cannot be injured or injustice be done by referring it for judicial examination to the Court of Claims. There is sufficient apparent merit in their claim to render eminently proper such a reference.

It will be seen from this report that, while the items are not stated in detail as now claimed, much there said is applicable here, as will be more readily seen as we proceed.

A first and leading question is, whether the Government subjected itself to liability in ordering the contract under which petitioners were proceeding annulled. And here, in addition to what was said in the report of March 1, 1870, it becomes material to quote from the contract, as bearing upon this and other questions raised, and for convenience we condense as follows:

In case any of the quantities, exhibited at the letting, shall be increased or diminished without changing the character of the work, such increase shall be paid for at the prices in this contract for the same class of work, and the parties of the second part agree to do the work at the prices stipulated, without making any claim for damages in consequence of such increase or diminution.

And it is further agreed, that approximate estimates shall be made at the end of each month, under the direction of said engineer, for all work done under the contract during said month; and that the amount of said estimates shall be paid (less 15 per cent. retained as a guarantee for the performance of the contract) by the middle of the succeeding month.

And it is further mutually understood and agreed, that in case the execution of this contract shall be suspended by the party of the first part on account of the lack of funds, or for any other cause, no claim for prospective profits on work not done shall be made or allowed.

It is further agreed, that in case the wages of laborers engaged in this work shall not be paid by the parties of the second part within thirty days after receiving the monthly estimate, the engineer in charge shall have the right to pay the said laborers the amount which is satisfactorily found to be their due, and deduct the said amount paid from the next monthly estimate, or from the 15 per cent. retained, as herein above provided.

And it is further agreed, that if, in the opinion of the engineer in charge, the said parties of the second part shall refuse or neglect to prosecute the work embraced in this contract, or shall violate any of its provisions, or perform the work in an improper manner, the said engineer shall certify the same in writing to the Chief of Engineers, United States Army, who shall have power to certify and declare that this contract has been violated and abandoned by said parties of the second part, and shall order the same to be relet to other parties in the manner provided by law. In case the contract shall be abandoned as above described, the 15 per cent. retained from the monthly estimates shall be considered as forfeited to the party of the first part.

That the said William Hannegan and John Hannegan shall commence the work herein contracted for on or before the first day of October, eighteen hundred and sixty-seven, (1867) and complete the same on or before the first day of July, eighteen hundred and sixty-nine, (1869) unless unavoidably prevented by high water, in which case it shall be completed on or before the thirtieth day of October, eighteen hundred and sixty-nine, (1869.)

And to provide for a speedy and just settlement, and to prevent disputes, it is hereby mutually agreed that the engineer in charge of the work herein contracted to be done, shall, in all cases, determine the amount or quality of the several kinds of work which are to be paid for under this contract, and the amount of compensation to be paid therefor; and shall, within ninety days after the work shall in all respects have been completed according to the terms and conditions of this contract, present a final account and estimate of the same, which shall be final and conclusive on both parties to this contract; and Bvt. Maj. Gen. James H. Wilson, U. S. A., will then pay to the parties of the second part the balance due, including the 15 per cent. retained on monthly estimates.

And the said parties of the second part hereby further agree to perform all the work

contracted for, as specified in this contract; but any alteration in the form, dimensions, location, or manner of doing the work, directed by the engineer in charge, beyond what is contemplated in the specifications annexed, which shall increase the cost of the same, shall be done as directed, and the engineer shall decide in writing what increased compensation shall be paid for such alteration; which writing shall be attached to and thereafter form a part of this contract, and the parties of the second part agree to do the work at the prices established by said engineer.

At the time this contract was declared violated, it was almost, if not quite, a certainty that the work would not be completed within the longest time fixed by the fifth provision above quoted. For though one-half the time had passed, but little if any over one-fifth of the work was performed. Prior to declaring the contract at an end, (in June, 1868, and other times,) the officer in charge fully warned these contractors of what was expected, and indeed demanded—pointed out their neglect to prosecute their work, and they had fair notice that greater diligence was required. It was but too manifest that, owing to unexpected high waters, and many unforeseen circumstances, the work had been taken too low. The sureties were uneasy—had advanced money—were fearful they would still have to do so, and advised the officer in charge that they could not invest further. The contractors were falling behind with their hands. There was no such evidence of increased activity after the notice in June, (which was very full, clear, and well stated, pointing out in detail where there had been failure, and what was necessary for the future,) nor at any time, as to induce a fair hope that there would or could be compliance with the contract. There was, in our opinion, therefore, the amplest ground for the engineer to conclude that petitioners were not prosecuting “the work embraced in the contract;” that they were “violating its provisions;” and hence he had the clear power, and then followed the duty, to declare such violation and abandonment. And this determined, we see at once that by the very terms of the contract, the first item claimed (15 per cent. on estimates—\$24,197.34—and almost one-fourth of the entire claims) falls to the ground. For it was “nominated in the bond” that, if the contract was thus abandoned, the 15 per cent. retained from contractors was to be considered forfeited to the United States. That amount, therefore, may be considered as out of the case, or disposed of, at least for the present.

The following items may be considered together, or in groups:

3. Cutting ice.
4. Two hundred yards first-class masonry.
5. Twenty thousand cubic yards of slope-wall.
6. Railroad tracks, bridges, &c.
7. Failure to cross-section after spring flood.
10. Cutting ditches.
11. Removing earth.
12. Building guard-walls.
13. Stone quarried and rejected.

It will be observed by the contract that very large powers were conferred upon the engineer in charge. Thus it was agreed, that “in all cases he was to determine the quantity or amount by the several kinds of work which are to be paid for, and the amount of compensation,” * * * and the final amount or estimate was to be “final and conclusive on both parties.” If alterations in the form, location, dimensions, or manner of doing the work were demanded, the engineer was to “decide in writing what increased compensation shall be paid for such alteration.” In case any of the quantities exhibited at the letting were increased, without changing the character of the work, such increase

was to be paid for at the prices named in the contract for the same class of work, and no damages to be claimed.

Under the powers thus given it seems that many of these items have been adjusted. We refer to them very briefly.

3. *Ice-cutting*; which, as we understand it, comes under the head of "bailing and draining," for which they were to be paid for the entire work \$2,500.00. They were paid up to the time the work was stopped \$1,250.00 and that certainly was all they could reasonably ask. The claim that they were required to cut a larger width than was necessary, is answered by the suggestion that this was for the engineer to determine and there is nothing to satisfy us that he acted improperly.

4. *Masonry*.—5. *Slope wall*.—7. *Failure to cross-section &c.*—11. *Removing earth*.—As to these items—or to part of them—no price was fixed by the contract. When the work was done, however, the engineer fixed the same, and payment was made under the monthly estimates. As to others it seems that they refer to earth washed away after it was put into place and left unprotected. And as to all of them, there is such want of testimony that complaint was made at the time, and it is so improbable that all these matters would have been omitted or overlooked, pressed as these contractors were for means, at the several regular estimates, we say, under such circumstances, we cannot believe them well founded. They are about \$27,000, and yet, though the contractors, according to their theory, were kept out of this large sum for months before the contract was declared forfeited, there does not seem to have been any special complaint. The report of the engineer to the Chief of Engineers, gives a full and detailed statement touching these several items, and if injustice results from their disallowance, it must be attributed to the contract into which petitioners voluntarily entered, and not from any fault of the law.

6. *Railroad tracks and bridges*.—Payment for this was not provided for except as to embankments, excavations, and ballasting, (which were to be paid for at contract prices,) in connection with a possible necessary change of the line of railroad then in operation along and near the proposed canal. This item, however, seems to relate to tracks, bridges, &c., *incidental to or connected with the canal itself or work thereon*. It was doubtless necessary thereto, and it would be quite as proper to tax the Government for dirt-roads made to "borrowing pits" as for these necessary railroads and bridges to assist in the work. If it is suggested that petitioners lost all this by being deprived of their contract, the answer, as stated above, is that the power to declare the contract at an end was properly exercised.

10. *Cutting ditches*.—This it would seem was covered by the usual monthly estimates. There is nothing to satisfy us that the work was outside of that performed under and provided for in the contract. The remarks above made are applicable here.

12. *Guard walls*.—These were clearly necessary as a *protection to the work*, and it is difficult to see how they could prosecute the same without having this. The Government was not required to pay for this.

13. *Stone quarried and rejected*.—We suppose this to relate to material rejected because it did not conform to the specifications. If so, the right to so reject was given by the terms of the contract. If otherwise, and it includes material on hand at the time of forfeiture, then, it was not to be estimated for until put into the wall in the regular course of construction. In either case it cannot be allowed.

8. *Use and wear of tools, eight thousand dollars*.—It appears that this was continued for two months, from October 25 to December 24, 1868,

and that there was estimated to be due these petitioners, (or their sureties, who it seems, somehow, as we suppose from money advanced, succeeded to the rights of petitioners,) \$5,200, or *ten per cent. per month*, for such use, which we cannot say is too little.

And it also appears from a communication from the Secretary of War to your committee, of March 19, 1874, that after hearing all the parties, including these petitioners, he, on the 9th of that month, allowed and paid the said sureties \$5,000 for this item, which was according to the estimate of the engineer, deducting certain bills for repairs, blacksmithing, &c., amounting to \$200.

9. *Moving fences, two hundred dollars.*—They were allowed \$96.54 for this work, per vouchers rendered, and in the absence of evidence to show that this was inadequate, or did not cover all the work done, we cannot conclude that they are entitled to more.

14. *Shifting the line of the canal twenty-five feet, twenty-five thousand dollars.*—Under this head it is insisted that petitioners were led to believe, by letter from the engineer of August 24, 1869, inviting them to make bids upon the work, that the depth of the water would be from eight to twenty inches. It also is further claimed that the line was changed after the contract was let, throwing it some 25 feet farther from the shore, thereby increasing the distance of hauling all materials, as also the depth of water.

As to the first claim, we remark that the letter referred to simply says that "the depth of ordinary low water is from 8 to 20 inches." This was a mere representation—no guarantee. Then, too, the parties were on the ground, invited to come before bidding, and had full opportunity to learn and judge for themselves. Not only so, but the representation was true. The fact that during the time these parties worked the water was higher than for previous or after years, does not make it otherwise.

As to the second insistment, the record fails to show any definite location before bidding. There were stakes, it is true, but, as we understand it, these were more to show the general line or direction than an actual survey. Then, too, the work was entered upon without complaint, and we hear nothing of this until the contract was declared violated.

This covers all the items but the second. But before recurring to this, we may add generally, that we are justified not a little in reaching the conclusions stated, by the findings of the former report and the action of Congress in refusing to send the case to the Court of Claims, and simply releasing the parties from their bond, and dismissing the then pending action. If these items were then regarded as just, it is fair to presume they would have been allowed, or at least the matter would have been remitted to the court for investigation. Relief was not granted, however, in either form, and we should have quite conclusive proof to justify a different order now. Such we do not find.

We come, then, to the second item, or balance due on estimates over and above the 15 per cent. reserved, \$11,896.28.

The engineer says that this should be \$11,424.53. However this may be, it will be seen that petitioners themselves admit that their laborers were paid, after their contract was declared forfeited, \$21,548.76. This the engineer had a right to do under the contract, and to it there is no complaint. But it is insisted that they still ought to have the 15 per centum reserved. Without some showing to the contrary, it strikes us as being but equitable that they should have this. If allowed, it would entitle them (adding the per centum to the balance due on estimates, and deducting the amount paid) to about \$15,000. From the former

report and the evidence, however, it appears that the Government necessarily sustained a loss in reletting the work. It was to cover this contingency, among others, this per cent. was reserved. Petitioners have had some \$10,000 over and above these estimates, (as also in effect, as we have seen, \$5,000 for the use of tools, &c.,) and we do not think they ought to complain. The Government is justly, and as far as we know, uniformly, held to a strict performance of its contracts. And if Congress, the courts, and the departments would adhere inflexibly to the same rule in enforcing contracts with the Government, against those violating them, we should have fewer "sham bids," less "straw bail," and should not be called upon so often to relieve parties from the consequences of contracts entered into either inconsiderately, or performed or not as best suited the interest or convenience of those entering into them. And yet we deem it just to say that these contractors are not obnoxious to these suggestions. They are shown to have been good, reliable gentlemen, of strict integrity, and entitled to the confidence of all persons. They had a hard contract. Their failure was not from purpose, but almost if not quite a necessity. The elements were against them, and they misjudged their work. If, influenced by what we believe to be right and duty, we could relieve them, we would. As we view the case, we cannot, and we hence ask to be discharged from the further consideration of this petition.

C

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1874.—Ordered to be printed.

Mr. FENTON submitted the following

REPORT:

[To accompany bill S. 552.]

The Committee on Finance, to whom was referred the bill (S. 552) to refund to E. and J. Koch certain customs-duties, beg leave to report :

That the papers in the case establish that Messrs. Koch, acting under the authority conferred under section two of joint resolution of March 2, 1867, imported, in the year 1873, certain machinery for the manufacture of beet-sugar. It seems, however, that the importers had in view, also, the application of the machinery to the manufacture of sugar from cane. Upon a presentation of the case to the Secretary of the Treasury for refund of duties, as provided under the joint resolution of 1867, to which reference has been made, it was found that the machinery was not imported *solely* for the manufacture of beet-root sugar. So, in a technical sense, the refund proposed could not be claimed under the provisions of that act; but the importation was clearly in the spirit of the act, having the same object in view, namely, the increase of production and the lessened cost of sugar, as well as, being within the general policy of our legislation for the introduction of machinery, to improve the processes of production and manufacture.

Supported by the following letter of the Secretary of the Treasury, appended as a part of this report, the committee reach the conclusion that the relief set forth ought to be granted, and therefore recommend the passage of the bill.

TREASURY DEPARTMENT,
Washington, D. C., March 10, 1874.

SIR: I am in receipt of a letter from the clerk of your committee inclosing Senate bill No. 552, with accompanying papers, for the refund to Messrs. E. & J. Koch of certain customs-duties paid by them at the port of New Orleans, on machinery imported into that port for the manufacture of sugar, in the year 1873, and stating that the committee desire my opinion in relation to its passage, with any additional facts the Department may have concerning the matter.

In reply I have to state that a claim for the refund of these duties was presented to the Department by one of the parties interested in the month of October, 1873, under section 2 of the joint resolution of March 2, 1867, which provides that from and after the passage thereof, machinery for the manufacture of beet-sugar, and imported for that purpose *solely*, shall be exempt from duty.

It appeared upon investigation that the machinery in question was of the kind generally used for the manufacture of beet-root sugar, but that the special object in view in importing it into the United States was to make experiments in the manufacture of sugar from the sugar-cane, and, therefore, the Department was compelled to deny the application for refund, as the machinery was not imported *solely* for the purpose of manufacturing beet-root sugar.

It seems to me quite as desirable to develop the production of sugar from the cane as from the beet; and as it is claimed that the machinery in question is able to produce a much larger amount of sugar from the same quantity of cane than by the ordinary process, I think the spirit of the law before referred to would sanction the passage of the present bill.

I have the honor, therefore, to recommend it to the favorable consideration of the Committee on Finance. Returning the papers submitted.

I am, very respectfully,

WILLIAM A. RICHARDSON,
Secretary.

Hon. R. E. FENTON,
United States Senate.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

[To accompany bill S. 558.]

The Committee on Indian Affairs, to whom was referred the bill (S. 558) authorizing the Secretary of the Interior to use funds from the sale of lands for the benefit of the Osage Indians, report:

That the fund from which the bill seeks to appropriate \$200,000 annually, for four years, is set aside by treaty stipulations with the Osages, for their benefit, in trust, in the custody of the United States, the interest arising upon which may be annually expended by the Government for the benefit of those Indians. It is now sought by the bill to take from the principal of the fund \$800,000 and apply it under the discretion of the Secretary of the Interior for the support and civilization of those Indians. The committee do not deny the object is commendable and worthy, nor that the amount, if judiciously and honestly expended, would greatly benefit the Indians; perhaps no better use could be made of the permanent fund, if it shall be touched by the Government for any purpose different from the original one expressed in the treaty with said Indians. But the committee doubt the right, and certainly question the propriety, of taking any portion of a fund sacredly set aside by treaty stipulation for a special purpose, without consent or authority expressed in any manner from those Indians, and using it for another and essentially different purpose. There is not so much as a verbal request from those Indians that this amount of their trust-fund may be so disposed of by the Government. We feel, therefore, that it would be unwise to make the appropriation provided for in the bill, or to authorize the expenditure gratuitously by the Government of any portion of the permanent trust-fund, even for the benefit of those Indians, or such portions of them under our administration of it as might be disposed to be favored by it. There ought to be some authority presented here from those Indians, either from the tribes or their commonly recognized councils or head-men, expressed in due form, before Congress should undertake to appropriate any portion of the trust fund. If no such authority shall be given, and this fund, without the consent of those Indians, shall be trenched upon, it is by no means certain that a claim in the future may not be set up and insisted upon, and we think with much force, that the United States shall make good to them the amount now sought to be appropriated for their benefit. Certainly those portions of the Indians who may not or will not be benefited by its expenditure can, and it may be safe to assume will, at some future day,

set up a claim to whatever amount may be taken from the trust-fund by this proposed legislation; and, doubtless, good and well-intentioned people will be found to present and insist upon such claim. In the absence of any demand, authority, or desire of those Indians to thus apply the trust-fund held by the Government for their benefit, we recommend the indefinite postponement of the bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 625.]

The Committee on Claims, to whom was referred the memorial of L. D. Evans, late internal-revenue collector for the fourth district of Texas, praying to be re'ieved from liability for certain losses of money collected by him, submit the following report :

The memorialist was collector of internal revenue for the fourth collection-district of Texas from the 30th day of August, 1867, to the 2d day of August, 1869. He claims to have suffered three losses of money while in office : one of \$4,920.92, which included a Treasury draft for \$1,622.50, which, being collected on a duplicate draft, reduced the loss to \$3,298.42; the second loss, through Deputy Collector A. Hotchkiss, of \$9,271.81, of which sum \$7,500 was recovered, reducing the ultimate loss to \$1,771.81; the third loss occasioned by the robbery of Deputy Collector McIntyre, amounting to the sum of \$2,753.18.

When this memorial was pending before the Forty-second Congress, the Commissioner of Internal Revenue, in answer to a letter from a member of the Committee on Claims, having charge of the case, stated as follows : "As to the condition of Mr. Evans's account I would say that there is a balance of \$5,604.72 standing against him on the books of this office, and that he has duly accounted for all taxes assigned to him for collection and for all moneys advanced to him for disbursement except for the sum named. It is the opinion of this office that late Collector Evans administered his office with discretion and fidelity."

In a subsequent letter to the committee dated February 25, 1874, the Commissioner corrects his previous statement as to the balance due, showing that it included a credit of \$192.39 since found to be erroneous, so that the correct amount now due from Mr. Evans standing upon the books of his office is \$5,797.11.

As the testimony submitted relates to two only of the losses stated in the memorial, the first and third, the committee proceed to state the particulars of these only, as shown by the evidence.

1. The collector's office was kept at Marshall, in the State of Texas. On the 22d day of February, 1868, William J. Evans, a nephew of the memorialist, deposited in E. B. Gregg & Co.'s safe a package of money containing about \$4,920.92, consisting of collections made on that day amounting to \$4,700.88, and a balance of \$220.09, due General H. Boughton on a Treasury warrant received from him; that there were in the package two \$1,000 and one \$500 Treasury notes, and one United States Treasury warrant for \$1,622.50 given in favor of General Boughton.

ton; that the package was well sealed in two or three places with sealing-wax, George P. Bonfoey as sisting in the sealing and the latter indorsing on the package the amount of the contents, as also these words. "L. D. Evans, collector of internal revenue, per W. J. Evans." Both then repaired to the office of E. B. Gregg & Co., in the same building where the collector's office was kept, Evans carrying the package. It was then handed to M. J. Hall, jr., who received it and placed it in the safe, no one else being present at the time. The collector had a wooden drawer in the safe in which he had been in the habit of depositing his moneys from time to time, which had a common lock, of which he and his deputy carried keys. But the collector and the deputy were both absent at the time this deposit was made, and had carried the keys with them. When the collector or his deputy was present, one of them always made the deposit in this drawer. When they were absent, the two clerks made the collections, and deposited the money in what was called the iron vault allotted to G. G. Gregg & Co.

There were three of these wooden drawers in the safe, one of which had been assigned to Collector Evans. Besides these, there was an inner iron vault in the safe which contained three compartments. The keys to this vault were held by E. B. Gregg and M. J. Hall, the latter gentleman being a clerk and book-keeper of E. B. Gregg & Co. The firm was composed of E. B. Gregg, residing in Marshall, and of Nathan Gregg, who resided at Shreveport, in Louisiana, and who was not in Marshall from the time of the deposit to its loss. They were the successors of G. G. Gregg & Co., which firm had been composed of the two gentleman just named, and George G. Gregg, who died in 1867. The only persons who had access to the safe at the time of the deposit in question were E. B. Gregg and Mr. Hall, who was clerk and book-keeper as above stated of the firm of E. B. Gregg & Co. The outer door of the safe was generally kept open during business hours, but the door to the vault was never opened except when business specially required.

The young gentlemen who deposited the money were clerks of the collector. There was still another clerk in the collector's office of the name of Thomas F. Purnell, who was absent in the country at the time of the deposit, but who returned to the office on Monday, the 2d day of March, 1868, the day the loss was discovered. One R. L. Evans was the deputy collector.

The two clerks, W. J. Evans and George P. Bonfoey, in separate affidavits swear circumstantially to the fact of the deposit on the 22d day of February. Evans swears that when he and Bonfoey made the deposit he remembers no one being in the office except Hall, to whom he handed the package, which he says Hall received and placed in the safe. He goes on to say that he did not call for the package nor inquire about it until the 2d day of March, when he was sent by L. R. Evans, the deputy collector, to get the money, and was informed by Hall, after he had looked into the safe, that the money was not there, and that he, the witness, had called for it some three or four days previous. Whereupon he returned to the collector's office and reported the matter to the deputy collector. Further he swears that neither the collector, deputy collector, nor chief clerk had been in the office from the 21st of February to the morning of the 25th of that month, on which morning, (25th of February,) the collector having returned from Shreveport, the witness reported to him the fact of the deposit, and the collector then instructed him to let it remain until he was prepared to withdraw it.

The witness further swears that he had witnessed several deposits

made in the same manner by Bonfoey, and had made one prior to this himself, about the 11th of February, and they were always returned upon demand.

Bonfoey's statement is that he saw the package delivered to Hall and the deposit of it in the safe by him, and remembers no one present but Hall at the time. He had himself made similar deposits six or eight times. The custom was for the one who made the deposit to call for the package when wanted, and the deposits were always made in the presence of a witness. He himself made a deposit in a similar manner on the 20th of February which he called for on the 21st, and delivered to the collector.

Hall in his statement admits that he had charge of the safe; that Evans the collector was in the habit of making deposits in it and had a compartment of which he carried the key, and that the young men, Evans and Bonfoey, often made deposits with him for safe-keeping—as many as ten or twelve in all, the packages being generally called for by the party depositing them, but he does not recollect the particular package said to have been deposited on the evening of the 22d of February, and having no particular instructions in the matter, he would have delivered it to any one connected with the internal-revenue office.

The witness then proceeds to say that Col. D. B. Martin, of the firm of Gregg & Martin, of Shreveport, deposited in the safe on the night of the 21st February, \$20,000, in gold and currency, which was put in the compartment marked G. G. Gregg & Co., subject to his order; that, on the 23d of the month, between day-light and sunrise, he, Martin, drew the balance of the deposit preparatory to returning to Shreveport, which balance was in currency, and amounted to \$6,500. The witness at the same time gave Colonel Martin a package of internal-revenue permits. No one was present at this transaction, and Colonel Martin's statement is not among the evidence. The witness proceeds to say, that after Martin left he locked up the safe and went to bed again; that, about the 25th or 26th of February, W. J. Evans came in the office and asked him for a package he had deposited, but the witness told him he had deposited none, but if he had that it was in the vault marked G. G. Gregg & Co.; that he then looked in the vault and found none, and again told young Evans that he had none. The young man then walked away saying that, "He supposed that Uncle Lem. had taken it," or something to that effect. The witness then asked Mr. E. B. Gregg if he had delivered a package, to which he replied that he had not—that he had never received or delivered any to any one connected with the internal-revenue office. The matter was then dropped and nothing more heard of it until Monday morning, March 2, when W. J. Evans came into the office again and asked the witness for a package he had deposited on the 22d of February. Hall told him he had none. Evans replied that he must have one. Hall then looked in the vault and found none, and then told Evans that he had informed him several days before that he had no package in the safe. He then went away, and returned in a few minutes with L. R. Evans, the deputy collector.

In speaking of the deposit of Martin, the witness says the money was all in large bills—and a \$1,000 bill was exchanged for smaller bills by E. B. Gregg at the internal-revenue office the following day. Besides this deposit of Martin's in the vault, marked G. G. Gregg & Co., between the 22d of February and the 2d of March, the witness remembers no other, and, moreover, the regular business of the house did not require this vault to be opened. The witness concludes as follows:

"This vault was not opened that I recollect of between the 22d of February and 2d of March, except once in a private transaction which

occurred on Saturday, the 29th of February, and except as stated above in looking for the package inquired for by said W. J. Evans."

The affidavits of these three witnesses were made on the same day, in Marshall, and soon after the transaction, to wit, 10th March, 1868.

On the next day Mr. E. B. Gregg made his affidavit, that he was a commission-merchant doing business in Marshall, in the firm of E. B. Gregg & Co.; that he had a large safe of S. C. Herring's patent, which the former collector had been in the habit of using for deposits; that one of the compartments in the safe, which was a wooden drawer fastening by a common lock, was used by Evans, the collector; that occasional deposits were made with Book-keeper Hall, from the internal-revenue office, which were placed in a certain iron vault in the safe; that he, Hall, alone had keys to the safe and vault; and as for himself, that he had not unlocked or used the vault for six weeks, and had neither received nor delivered any packages from the internal-revenue office. It appears from the affidavit of the deputy collector, that although he was at the office on the 25th, 26th, and 27th days of February, he was not informed till this last day of the deposit made on the 22d of February.

We have now laid before the Senate the testimony in detail of all the parties to the deposit, and of the gentlemen having charge of the safe in which the deposit was made. Two swear positively to that deposit, and to the contents of the package deposited, and the time it was deposited, and they agree that Hall received it. The latter does not in terms deny its receipt, but has no recollection of that particular transaction. If the money was received and deposited, we infer it must have been placed in the iron vault; first, because the collector carried the key to the wooden drawer; and next, because Hall went to the vault to search for the package when Evans called for it. Moreover, Hall and Gregg had keys to the vault, so that the presumption is irresistible that if the package was placed in the safe, it was deposited in the vault, marked "G. G. Gregg & Co.," which no one but Gregg or Hall had the means of entering. Now we know that this vault was opened several times: First, when, on the night of 21st of February, Martin deposited the \$20,000 in gold and currency; next, on February 23d, before sunrise, when he withdrew the last of the deposit, \$6,500 in currency; next, upon the different occasions, we know not how many, when the \$13,500, residue of the \$20,000, was withdrawn; then, again, on February 26, when young Evans called; and, lastly, on the 29th of February, when Hall swears it was opened "on a private business transaction which occurred on Saturday." We trace the money then into the vault and know just who had the means of getting to it, and are informed of the different occasions it was opened between the 22d of February and the 2d of March. But it is much to be regretted that Hall and Gregg are not fuller in their statements as to these different occasions when the vault was opened and as to who were present at the time. We do not know how often it was opened for Martin's accommodation, nor do we know anything of the particulars of that private transaction on the 29th of February, when it was opened; but in whose presence, for what object, what was placed therein, or taken therefrom, we are utterly ignorant.

Now it is a very plain proposition that if that package went into that vault as alleged—and we see but one reason to doubt upon that point—it must have been abstracted, and by human hands, designedly or by accident, and the memorialist owed it to Congress to leave no means unemployed to find out the taker, since he asks to be relieved as one without any fault in the matter. Now we repeat, we do not know from Gregg or Hall what persons had the opportunity of taking this

money; we should know the names of all, their character and standing, and some reason should be given why their affidavits exonerating themselves are not here.

The doubt expressed—if it may be called a doubt—as to the fact of the deposit, arises from the unexplained conduct of W. J. Evans, the depositor. We know that he called and inquired for a package on the 25th or 26th of February, and that Hall promptly told him that he had deposited none, but, if he had, it was in the iron vault. He looked in the vault and found none and so reported to Evans. Now what surprises us is that this young man took this announcement so coolly and made no fuss about it, and, so far as we know, never communicated the loss to any one until the 2d of March, when he called a second time and inquired for the package. He was then sharply told by Hall that he had no package there and had been told that several days previous. He submitted meekly to that assertion. It comes to us as proof, because not contradicted, and it is one of the mysteries of this case, that this young man, who is so particular in giving the circumstances of the deposit and the contents of the package deposited, who delivered it himself to Hall and saw the latter place it in the safe, should be told four days afterward by Hall that he knew of no such package being deposited and none such was in the safe then, and that he should have turned away, and made no complaint of the loss whatever to a human being, so far as we can learn. It is also a circumstance to be noted that this young man never gave information to the deputy collector or to any one else, so far as we know, of the deposit he had made, until the 27th day of February, when he informed R. L. Evans, the deputy, of the deposit, but said nothing of Hall's report that it could not be found.

We have been thus particular to place side by side all the evidence in this mysterious transaction for the purpose of drawing this conclusion, that, without undertaking to locate the crime, the memorialist has not shown enough to exonerate himself from liability. This conclusion rests upon the following reasons:

1st. As collector he became insurer of the taxes collected.

2d. It was his business to provide a safe place for the keeping of the public money.

3d. If he saw fit, as it was his privilege, to commit the custody of the money to other hands, without authority of the Government, it was competent for him to place the bailees by contract in the same relation he held, as insurers. He could have made E. B. Gregg & Co. bailees for hire by paying them for safe-keeping his money, and then his recourse upon them for the loss would have been undoubted. We think he should have made them such bailees if he was not willing to go to the expense of procuring for himself a safe.

4th. He has not made the experiment of holding any of the parties responsible for the loss by suit. A judicial investigation, with all the parties before the court subjected to a rigid examination, it seems to us must have shed some light as to who was the thief; and we are of opinion that Mr. Evans has no right to relief for this item of \$3,298.42, which clearly lies between those trusted by him. If the package of money was deposited, as is sworn, then Gregg or Hall or both are culpable for the loss. The safe was not blown open by burglars, nobody else's money was taken, and, if this was taken by any carelessness of theirs, or either of them, Mr. Evans might have provided against loss by paying them for safe-keeping the money. His commissions would have justified such an outlay. We are persuaded that, on the state of

facts proved it, E. B. Gregg & Co. would be held responsible in a court of law as gratuitous bailees.

There is another point: When Martin called before sunrise for the balance of his deposit, Hall swears that he gave him the package of internal-revenue permits. He went back to his bed after this. The presumption is that he was not fully awake when this was done. Of course he had all confidence in Martin. We know from his evidence that he had no recollection of this particular deposit. Is it not possible that he gave Martin this package with the internal-revenue permits, or in their place? Such a presumption arises that the memorialist owed it to Congress to have furnished Martin's affidavit.

There is still another mystery in this matter. It will be remembered that when, according to Hall, young Evans first called for the package on the 25th or 26th of February, and was told it was not there, he walked away saying that he supposed Uncle Lem. (meaning the collector) had taken it. Now the collector reports his whereabouts during this period as follows: on Saturday, 22d, he was called to Shreveport, and returned Monday night, the 24th. On Tuesday morning he says W. J. Evans informed him of this deposit, and he instructed him *to let it remain for the present*, as the deputy and chief clerk were both absent sick. On the 26th the deputy, still feeble, was not able to attend to anything except some immediate pressing office-business. On Thursday, the 27th, the collector went to Jefferson and returned on Friday night, the 28th. On Saturday, the 29th, he and his deputy were busily engaged in the office and not prepared to attend to the package.

Now, then, if young Evans said to Hall that his uncle had probably got the package, that uncle either had not got home, or if he had, had directed him to let the package remain where it was; and, if so, why should he have called for the package; and in either event, why should he not have reported Hall's ineffectual search for the package, so well calculated to alarm him, to his uncle or to R. L. Evans?

Finally, supposing the money put in the safe as sworn to, we have this to say in conclusion upon this branch:

The testimony indisputably shows that Martin had access to this iron vault not once only, but repeatedly during the very time the deposit of the money in controversy was there. The committee are constrained to regard the fact that the memorialist has not furnished us Martin's affidavit, or shown any excuse for not doing it, as not only a suspicious circumstance of itself, but such as to forbid us from allowing this portion of his claim.

There remains to be considered the second item of his loss—the robbery of McIntyre.

On the night of the 6th of May, 1869, near Athens, Henderson County, Texas, the memorialist lost the sum of \$2,753.18, internal-revenue funds, collected at that point by his deputy, W. B. McIntyre, in this wise: On the 15th of April the deputy reached that place with his lists, and stopped at the Carroll House, and proceeded to issue notices to the parties charged on the lists with taxes, and to make collections. As moneys were collected, day by day, they were deposited in the safe of a reliable mercantile firm in Athens, a fact which was known, or might have been known, as no attempt to conceal the matter seems to have been taken. About the 3d of May, having completed his collections as far as practicable, he commenced making arrangements to return to Marshall with the funds. He made efforts in several directions to procure horses. His plan was to have a man accompany him on horse-back and return the two horses. From the number he applied to, it

must have become known pretty generally that he was about leaving. Finally he got a horse for himself, and employed an idle, drinking blacksmith of the name of Hendon, who owed an occupation tax which the deputy proposed to commute by the service of his accompanying him to Marshall, and returning the horses. This Hendon, although a thriftless man, had a good reputation for honesty, and there is nothing in the testimony to show his complicity in the robbery that shortly afterward occurred. McIntyre's purpose was to leave Athens on the night of May 5, and he instructed Hendon to make his arrangements accordingly. He also drew his money from the safe, stating to the gentlemen with whom it was deposited, his purpose to leave that night, but saying nothing of the road he intended to take. Hendon came about 8 or 9 o'clock, but was too much under the influence of liquor to be a serviceable escort, and was dismissed with the word that he would be informed when he was needed.

The next night Hendon came to the hotel where the deputy was stopping about 11 o'clock, and they both rode off in the direction of Palestine, the landlord, Carroll, being privy to the fact. The Palestine road runs south from Athens, and the riders having followed it for half a mile, stopped at a well and dismounted, when McIntyre informed Hendon that he had taken that road in order to deceive any party who might be watching his movements, and that his real purpose was to return quietly and take the road leading from Athens to Tyler running in an east direction. They had ridden but a short distance on the return when Hendon called the deputy's attention to an object ahead resembling a man on foot, and also certain noises resembling horses' feet on the ground, but the deputy saw nor heard anything which was calculated to excite his fears. They then rode back to town, going through its edge and out upon the Tyler road. They had ridden a mile or mile and a half, Hendon on the left and a little in advance, when the deputy was halted by a voice near him coming from the dense bushes on his immediate right, and while he was in the act of increasing his speed, a man stepped from the bushes and ordered him to throw down his saddle-bags on pain of death. This he hastily did, and was in the act of starting forward, and had gone about ten feet, when another man stepped from the bushes a few feet in front of him, and ordered him to give up his money or he would be a dead man. He dismounted, and took from his inside coat-pocket an envelope containing \$2,000, and handed it to the man. He was then told to get away from there and not return. There were profane embellishments in this spirited colloquy which we omit. The deputy had borrowed from his landlord on starting a small derringer pistol which he freshly capped, but his perturbation of spirits made him quite forget the weapon when the occasion came for its profitable use. The deputy confesses, in his elaborate report to his chief, made on the 14th of June, 1869, from which, with great privilege of abbreviation, we have condensed this account, that he was utterly surprised and alarmed from the moment he was first halted until he quit the dangerous neighborhood. This drama lasted but a few seconds. The night was dark, the road very narrow and a dense growth of trees inclosed the road, throwing it into deep shadow so that objects could be imperfectly discerned, and only the outlines of the robbers could be seen, but not their arms, but he was so well satisfied that they had weapons and meant mischief in case he attempted flight or made resistance, that he was convinced at the time there was no other way to save his life but to comply with their demands. Upon riding forward in the same direction he overtook Hendon, whom he had quite lost sight of from the mo-

ment of the halt. He was suspicious that he had been betrayed by this man, and drew his pistol upon him and charged him with being an accomplice. But Hendon's appearance convinced him that he was as much frightened by the robbers as himself, and he dismissed his suspicions. Finally, as there was no stopping-place on the Tyler road for several miles, they concluded to return to Athens by a circuitous route, but, getting lost, they stopped in an old field near the road until daylight, without sleeping. On their way back at the scene of the robbery McIntyre picked up his saddle-bags and what had been their contents, scattered over the ground, except \$480 in gold, which was missing. Hendon was full of laments that he had not taken his wife's advice and remained at home, rather than indulge in the honorable but dangerous companionship of a revenue officer. There are passages in this report which forcibly recall the laments of Sancho Panza, in the disastrous campaigns he performed with his master, when both master and man were the sufferers. Sancho, too, had a good wife who often counseled him in the strain of Mrs. Hendon. But the spirit of knight errantry is not extinct, nor is the material for faithful squires lost to the world.

The next day, several of the good citizens of Athens visited the scene of the robbery, and signs of the two robbers were seen, not only in the roadway, but by its side, where they were waiting in the bushes for their prey, but the traces whence they came or went could not be followed up. The envelope which held the currency had been found by a countryman in the morning. For two days Mr. McIntyre remained in Athens employing every means he could to ferret out the criminals, but without success, and so he returned to Marshall minus the funds, and reported the robbery. Many efforts were made afterward to the same end, but the secret has never transpired.

The business of the deputy was generally known while he was in Athens; indeed, it could not be concealed. But the deputy does claim that he used every reasonable art to evade all inquiries as to the time he intended to leave and the route he purposed pursuing. There is a great deal of evidence on file relating to the transaction, and some that creates a doubt whether McIntyre was not privy to his own robbery. We do not think he acted with the greatest prudence in laying his plans for leaving the town, nor do we approve of his surrendering his money without making some effort to save it at the risk of his life even, when he had counted upon danger, and prepared for it. His escort was also armed, but neither of them used, or thought of using, their weapons.

The collector promptly reported the robbery to the military post at Jefferson, and desired assistance of the troops there in arresting the robbers, but Captain Chaffee, commanding the post, refused to send out any military aid, since McIntyre was unable to locate the crime upon any person. Mr. Evans also reported his various attempts to discover the authors of the wrong to Colonel Belger, the supervisor, and otherwise took such methods as seemed proper on the occasion.

Among the evidence is a report made to the collector by Thomas Brownrigg, clerk of the assistant assessor, who visited Athens and conversed freely with Hendon and various citizens. There was a strong sentiment in that place that McIntyre had conspired to have himself robbed, and there is much in his conduct to favor that suspicion. His report from which we have quoted so freely is contradicted in several important respects. He was anxious to obtain a certificate from citizens of good standing, to be given to the collector, which should shield him from suspicion of complicity, and drew up a statement which they re-

refused to sign without modification. He also procured a meager statement from Hendon which did not express the whole truth, but omitted important facts.

It was untrue that he capped his pistols before starting. So impressed was Hendon with danger, the night they went back to Athens and took the Tyler road, that he endeavored to persuade McIntyre to stop at his house over night; but he refused to do so. He displayed some money on his return to Athens, and when confronted with his assertion of robbery, claimed that this was private funds of his own, concealed on his person and not given up. Hendon too is believed to know more than he has sworn to—indeed to have recognized the voices of the robbers—but he refused to furnish any evidence which would lead to their arrest, on the ground that his life would be in danger. Upon summing up the whole case, Mr. Brownrigg, however, concludes, "That there is no evidence adduced in the course of my investigations which seems to warrant the conviction in the minds of the people of Athens that McIntyre was a party to the transaction is apparent, but there are guilty parties somewhere and an experienced detective might succeed in ferreting them out."

It is also proper to add, that it appears from the evidence of the assessor of internal revenue of that district (Horace Boughton) that there was a large number of outlaws and desperadoes throughout the country at that time who had been demoralized by the war, and who were in no fear of molestation, as the civil authority had not then been re-established, and the military force was insufficient to exercise the necessary control to prevent their operations. Near that time, and not far from this locality, an entire train containing Government supplies and guarded by United States troops was captured. The feelings of the people, embracing those who were considered eminently respectable, were bitter against the Government, so much so that they would sooner have protected one who had stolen Government funds than aid in his arrest.

A word as to the collector. All accounts agree that he was and is a man of probity, and loyal to the Government. He has filled positions of high trust in Texas. The Commissioner of Internal Revenue says of him, "It is the opinion of this Office that late Collector Evans administered his office with discretion and fidelity."

Gen. J. B. Sweet, the late acting Commissioner, now deceased, in a letter to the Secretary of the Treasury, dated April 13, 1872, pays this tribute to Mr. Evans. After stating that the letters and documentary evidence on file in his Office show that \$3,298.42 was stolen from the safe and that \$2,753.18 was stolen from one of his deputies by highwaymen, near Athens, he concludes:

It is the impression of this Office that the facts are as stated in the inclosed papers, and that the late Collector Evans is in equity entitled to relief therefrom. There is a balance of \$5,604.72 standing against him on the books of this Office. He has accounted for all taxes assigned to him for collection, and for all moneys advanced to him for disbursements, except in the sum named. Reliable and experienced agents of this Office have from time to time examined his accounts, and I am satisfied from their reports that Mr. Evans administered his office with discretion and ability.

The committee feel a sincere regret that they are unable to recommend that Mr. Evans should be relieved from the loss of the moneys deposited in the safe of E. B. Gregg & Co.; as to those lost through the robbery of McIntyre, they are of opinion he should be relieved, and report a bill accordingly, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1874.—Ordered to be printed.

Mr. BOREMAN submitted the following

REPORT:

[To accompany bill S. 90.]

The Committee on Claims, to whom was referred the bill (S. 90) for the relief of John W. Hickey, of the State of Louisiana, have had the same under consideration, and respectfully submit the following report:

All the facts that the committee have been able to obtain in regard to the claim proposed to be provided for by this bill are set forth in the following *résumé* of the case, furnished by the Treasury Department, where alone, so far as the committee are advised, its history is to be found; that is to say:

In the matter of the claim of John W. Hickey.

John W. Hickey, in a communication dated February 5, 1868, petitions the Secretary of the Treasury for a reward for information which led to the restoration to the Government of the United States of the records of the custom-house at New Orleans under the following circumstances, as stated by him: At the time of the capture of New Orleans in May, 1862, the records of the custom-house were missing, and, notwithstanding the efforts of the military authorities and officers of the Treasury Department, were not recovered until about the 3d of September, 1865, when they were found by him, and he at once gave the information to Thomas M. Wells, the naval officer at New Orleans. Upon the assurance of Mr. Wells that he would be liberally rewarded, he delivered to him the missing records contained in seven large boxes, which were subsequently transferred to W. P. Kellogg, then collector of customs.

He incloses a paper, of which the following is a copy:

“NEW ORLEANS, September 3, 1865.

“The Secretary of the Treasury at Washington, Hon. Hugh McCulloch, having the power to grant rewards for the recovery of property belonging to this department, we, the undersigned officers of this department, pledge ourselves to use all influence in our power to reward any person or persons who may deliver the books, records, or other matter belonging regularly to this custom-house, in proportion to the value of the same, which we deem is all we can do in the premises, and which we think will be readily agreed to by the Secretary of the Treasury.

“WM. P. KELLOGG,
“Collector.

“THOS. M. WELLS,
“Naval Officer.”

Petitioner states that Mr. Kellogg and Mr. Wells conferred at different times on the subject of the reward, and both agreed that it belonged to him; that they would aid him in obtaining it.

He also incloses a letter from Mr. Wells, dated January 12, 1866, in which his claims are referred to as follows:

“FRIEND HICKEY: Your letter has been received some time past, and being anxious to close our little affair before writing, I have consequently apparently neglected you until now, and seeing no end to the matter as yet, I have concluded to write you at once and wait no longer.

“I have insisted on having a statement from the collector relative to the probable

amount of compensation that would be allowed, and cannot as yet get him to come to any definite conclusion; I will not receive any small sum, unless I find it is all that is allowed."

In view of the circumstances, the petitioner suggests "that the sum of \$10,000 would be no more than a fair reward for the recovery of the records, due regard being had to the importance of the recovery of the records and their great value since their recovery."

February 18, 1868, the Department transmitted the petition, &c., of Mr. Hickey to Collector Kellogg for report, who, on the 1st of April following, replied as follows:

"I respectfully state that I have delayed reporting in this case for the purpose of procuring a statement, to be transmitted with my report, from T. M. Wells, late naval officer at this port. Mr. Wells has been long absent from the city, but as he does not return, as I had hoped, I have concluded not to longer delay this report.

"Some time in August, 1865, Mr. Wells, the then naval officer, came to me and informed me that a large number of the records and other papers of this custom-house were taken away by the confederate forces at the outbreak of the rebellion, and secreted; that a Mr. Hickey had stated to him that he could give information which would lead to their discovery and restoration. After several interviews upon this subject, Mr. Wells brought me one of the papers which was inclosed in your letter of February 18, and which I herewith return, marked A, requesting me to sign the same in connection with him, which I did. A short time after Mr. Hickey gave us the requisite information, whereupon I detailed an officer to take possession of the records referred to, and telegraphed the Department of the fact of their recovery, under date of September 4, 1865. The records consisted of old warehouse books, weighers and gaugers' returns, warehouse papers, and large quantities of other papers; in all, seven large boxes, relating to nearly every department of this custom-house for a series of years. I caused these records, with others that I found in a confused and disordered condition, to be properly arranged and classified, setting aside a room for that purpose, called the record-room, in which we have systematically arranged all records pertaining to this custom-house, in our possession. The records thus procured upon the information of Mr. Hickey, of course, were of considerable value to the Government, and supplied discrepancies which would have been very troublesome and very much impaired the value of our records. I have no doubt Mr. Hickey was at considerable trouble and expense. Mr. Wells, the late naval officer, has often urged upon me the claim of Mr. Hickey, and insisted that he was fully entitled to the compensation he demanded, as will be seen by the tenor of his letter to Mr. Hickey, of date of January 12, 1866, which I herewith return to the Department, marked B. I am, however, of the opinion that the claim of Mr. Hickey for the amount of \$10,000 is too large, and I think \$6,000 would pay him very well for his trouble and expense. I therefore respectfully recommend, if consistent with the views of the Department, that Mr. Hickey be allowed that amount in liquidation of his claim."

A letter from the Department dated May 4, 1868, acknowledges the receipt of the collector's letter, of April 1, and proceeds as follows:

"The information now before the Department is not sufficient to warrant the Secretary in coming to any conclusion. He desires to be informed of all the circumstances attending the recovery of the records, so far as they have any bearing upon this claim; of the extent of the connection with it of Mr. Hickey, and whether any considerable labor was performed, or expense or risk incurred by him."

No reply thereto appears to have been received.

Since that time the claim has been called up on several occasions, and it appearing that there was no appropriation applicable to its payment, no examination as to its merits was made.

"TREASURY DEPARTMENT,"

"February 6, 1874.

"This memorandum contains the facts in the claim of John W. Hickey as they appear on the records of this Department, and it is respectfully forwarded to Hon. Mr. Bree-man, United States Senate, in accordance with his request."

Respectfully,

"E. A. SAWYER, Assistant Secretary."

From this statement of the transaction it is very difficult to tell whether anything should be paid to the claimant or not. It does not clearly appear that he expended any money or performed any labor. If he merely disclosed to the Government officers the place where the books, records, &c., were secreted, this was only the duty of a good citizen, performed without any outlay of his means and with little inconvenience to himself. The officers at the custom-house thought he was entitled to some compensation. Claimant demanded \$10,000. The collector was of the opinion that \$6,000 was enough.

Upon ~~the~~ whole case the committee have come to the conclusion that there is **nothing** in it to justify them in reporting in favor of any relief whatever **to** claimant. They ask, therefore, to be discharged from the further **consideration** of the bill referred to them, and that the same be indefinitely **ly** postponed.

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Your obedient servant,
J. W. L. L.

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

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Your obedient servant,
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Your obedient servant,
J. W. L. L.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1874.—Ordered to be printed.

Mr. HAMILTON, of Maryland, submitted the following

REPORT:

[To accompany bill H. R. 555.]

The Committee on Patents would respectfully report that House bill No. 555 has been favorably acted upon by your committee, and that its passage is recommended. The facts are these: That McClintock Young took out a patent for improvement in harvesting machines on the 28th of June, 1859; that under existing law he was entitled to renewal by Commissioner. This renewal was issued to him with date of 28th of June, 1873. The validity of this extension is questioned on the ground that his original patent expired on the 27th of June, 1873, and that the extension should have been made a day earlier. The fault is with the Commissioner, if this interpretation be correct, as the application was made six months before the expiration of the original term of the patent. This bill is to remove all doubts and confirm the validity of the extension.

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IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1874.—Ordered to be printed.

Mr. CRAGIN submitted the following

REPORT:

The Committee on Naval Affairs, to whom was referred the memorial of O. K. Curtis and als., certain graduates of the Naval Academy, praying for a re-arrangement of their names on the official list of the Navy, so that they may take rank and precedence as determined by the date of their graduation, have had the same under consideration and submit the following report:

The memorialists graduated at the United States Naval Academy of the date of June 4, 1869, and deem themselves illegally and unfairly treated by the Navy Department, by reason of being deprived of their rank in the naval service, which they say was determined at the date of their graduation, and secured by the act of July 16, 1862. The petitioners are twenty-six in number, and it appears that they took their position in the class according to academic merit, but that all knew that a competitive examination would be had when the promotion to the grade of ensign was made, and, if competitive, each member of the class had reason to believe that class numbers would be changed, and were not in the least disappointed when the declaration was made that quite a number had failed to pass. Instead of placing the names of petitioners at the bottom of the list, and compelling them to wait a year, as might have been done for a second examination, they were allowed time to study up in those branches in which they had shown themselves to be deficient, and were then ordered before a special board and passed upon a second trial.

The rest of the class passed upon the first examination, and when the standing of the whole was made out, these petitioners who failed found, to their amazement and evident displeasure, that they had gone down numbers, and for this reason think they have been unjustly dealt with, and having failed at the Department in their application for redress, petition Congress for relief.

The following letter from the Hon. Secretary of the Navy to Hon. John A. Logan gives the views of the Department relative to the alleged grievances of Curtis, Niles, and associates:

NAVY DEPARTMENT, July 30, 1873.

MY DEAR MR. SENATOR: * * * * *

This would, ordinarily, be sufficient to define the position of the Department, but the interest you take in the question, and my desire that you shall fully understand it, induce me to supplement the solicitor's, with a somewhat more detailed statement of the facts and principles governing the case. Originally, the grades now known as "midshipman" and "ensign" were called "midshipman" and "passed midshipman," and no midshipman could be examined for the grade of passed midshipman until after he had been in the service for at least six years, and had spent four years at sea.

Before he was promoted to the grade of passed midshipman he was subjected to a rigid examination upon all the branches of professional knowledge, including practical navigation and seamanship, &c., and his standing at this examination determined his standing rank or number among his fellows of the same date. After the Naval Academy was established, all midshipman after going through the course at the Academy, and passing the "final academic examination" were sent to sea at least two years, to learn to put in practical operation the principles they had been taught, and after this sea-service were subjected to another and "final graduating examination" before they left the grade of midshipman, and emerged into the state of passed midshipman. Their standing and proficiency at this examination always entered into and with their academic standing determined their rank or number with their fellows of the same date.

During the war, when the Government was about to appoint from the volunteer service officers of the grade and duties of "passed midshipmen," to avoid the apparent incongruity of calling officers "passed" midshipmen who had never been midshipmen, the name of the grade was changed to "ensign."

This new grade was exactly the same in rank, duty, and position as the one for which it was substituted, and was acquired by the midshipmen at the Academy by exactly the same processes, and after the same probation.

The second or "final graduating examination," at least two years after the "final academic examination," was still continued, and, in every case where it was had, entered into and helped to determine the rank or number of the midshipmen who passed it.

Some question was raised as to the effect of the language of the 11th section of the act of 1862, but upon that question being referred to the then Attorney-General, Mr. Speed, he decided that the "final graduating examination," referred to in that section was not the "final academic examination," but the other and final examination, which was had after the midshipman had illustrated by practice his acquaintance with the principles taught at the Academy, through which he emerged from the state of an undergraduate, holding only a warrant of the Secretary of the Navy, into the condition of a commissioned officer, nominated to the Senate, and commissioned by the President, and by which his rank or number as such officer was finally determined.

This decision of course settled the question as far as the Department was concerned and has determined the action of the Government since. Whatever may have been Mr. Evarts's outside opinion when employed to argue the case of the graduates of the Naval Academy against the claims of the officers appointed from the volunteer service, he certainly never gave while he was Attorney-General any opinion adverse to the decision of Mr. Speed.

Nor could he do so, I think, if he properly understood the case and the laws governing it. The very act of 1862 fixed and limited the number of ensigns who could be in the service at any one time.

This was certainly inconsistent with the idea that midshipmen were to become ensigns by the mere fact that they had passed the regular and stated examination of the Academy which yearly and every year sent out a varying and uncertain number of midshipmen without regard to the number of ensigns already on the list. Equally inconsistent is the act of March 3, 1865, which gave a different and increased rate of pay to midshipmen after their "final academic examination," during the interval before they are promoted to the grade of ensigns, which happens when they have passed their "final graduating examination." If there is by law no interval, why provide by law for different pay during the interval?

Certainly the customs of the service, the practice of the Department, and the manifest propriety of testing their practical knowledge of their duties as officers, before intrusting them with the duties of command, and the responsibilities of commissioned officers, all concur to make this view proper in itself, provided it can be justified in law. The final legal authority for the Department (the Attorney-General) has decided that it is so justified and required by law, and I confess I agree with him, Mr. Evarts to the contrary notwithstanding.

If I had any doubts, the inextricable confusion in which a change of this policy would involve the Navy-list, would determine my action. If it be settled then that "the final graduating examination" of midshipmen, referred to in the act of 1862, was this final practical examination, that they were not entitled of course to promotion to the grade of ensign, but remained uncommissioned undergraduates until they passed it, (and this status has been fixed by specific enactment by the act of 1870,) it follows of course that the character, conditions, and effect of the final graduating examination of such undergraduates are to be fixed and determined by the regulations of the Navy, governing the same made by the Secretary according to law. No one will question, I think, the propriety of allowing and making the result of this "final graduating examination," after they had had an opportunity to illustrate practically their naval proficiency and accomplishment, to enter into and affect the rank or standing on the list, among their fellows of the same date, of the undergraduates who emerge through it into the condition of commissioned officers. To insist that their

mere academic-student-standing should be final, when they are to undergo another examination after they have had opportunity for practical experience in the application of naval principles, and make this final examination a farce, as some of the young gentlemen seemed to consider it, would be very bad administration.

During the height of the war, after 1863, when all the naval officers that could be had were needed, and neither examiners nor examinees could be spared from active duty, this final examination was omitted for the time, and so for two or three years after its termination, when officers were scattered and had little or no time for special study; but when things became again settled, it was considered proper to continue it, and this has been done ever since, making its value equal to that of the "final academic examination," and determining the number of the graduate on the list by the sum of both.

That this is justified by law, I think is clear; that it is proper in itself, I think few disinterested persons will dispute.

The fact that the members of the board of examination sometimes change is a circumstance which cannot be controlled under the conditions of a varying and diversified professional duty, and is one of the natural imperfections of all human machines. The standards of the examination are the same for all the members of the same class, and the value given to each study and examination the same, and as the result only affects their standing among their fellows of the same class, there is no wrong done to any one. The act of 1872 referred to does not affect the examination for ensigns, nor lessen its effect, the provisions of the 1st section of the act having been intended and construed only to affect the rank of the graduates during the interval between the two examinations.

Indeed, as a comment upon the fairness of the examinations of the class of 1869, which Mr. Niles questions, I may remark that a larger proportion of the second half of the class of 1869 failed than of the first half.

Excuse this long letter, but I could hardly make a clear statement shorter, and believe me,

Very truly yours,

GEORGE M. ROBESON,
Secretary of the Navy.

Hon. JOHN A. LOGAN, *Chicago, Ill.*

If the prayer of the memorialists was granted, then these men would be placed back on the list above those who passed their examination on the first trial; and the committee are of the opinion that it would not be just to deprive those who were successful of their meritorious position on the list by placing above them those who failed to pass the same examination. To do so would be a thrust at the laudable incentive of all young officers to study their profession, and those who may in the future fail in examinations would resort to congressional influence, citing the asked-for action in this case as a precedent, endeavoring to gain by legislation what was lost by lack of proper intellectual effort.

The alleged illegality in depriving them of rank is not well founded, and the only legal claim they could assert for a change from their present position would be to go to the foot of their class.

The committee recommends that the further consideration of this memorial be indefinitely postponed.

The first of these is the fact that the Department of Agriculture has been and is now engaged in a systematic study of the various phases of the agricultural problem. This study is being conducted in a number of different ways, and the results are being made known to the public in a number of different ways. The first of these is the fact that the Department has been and is now engaged in a systematic study of the various phases of the agricultural problem. This study is being conducted in a number of different ways, and the results are being made known to the public in a number of different ways.

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THE SECRETARY OF AGRICULTURE
WASHINGTON, D. C.

The third of these is the fact that the Department has been and is now engaged in a systematic study of the various phases of the agricultural problem. This study is being conducted in a number of different ways, and the results are being made known to the public in a number of different ways. The third of these is the fact that the Department has been and is now engaged in a systematic study of the various phases of the agricultural problem. This study is being conducted in a number of different ways, and the results are being made known to the public in a number of different ways.

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IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1874.—Ordered to be printed.

Mr. JOHNSTON submitted the following

REPORT:

[To accompany bill S. 629.]

The Committee on Revolutionary Claims, to whom was referred the "memorial of Osceola C. Green, administrator de bonis non, and one of the heirs of Uriah Forest, deceased, asking such legislation as will authorize payment to the estate of said decedent to the amount of half-pay allowed by law, for services rendered by him in the war of the Revolution," have had the same under consideration, and respectfully submit the following report:

That this claim was presented to Congress heretofore and referred to this Committee, which then made a written report, which is now adopted by the Committee, except the recommendation for the payment of interest, and is as follows, viz:

[Senate Report No. 304, 41st Congress, 3d session.]

JANUARY 23, 1871.—Ordered to be printed.

Mr. JOHNSTON made the following report, (to accompany bill S. No. 1239 :)

The Committee on Revolutionary Claims, to whom was referred the memorial of Mrs. Ann Green and Mrs. Maria Bohrer, of the District of Columbia, asking to be allowed the arrears of half-pay claimed to be due to Lieut. Col. Uriah Forrest, of the Maryland Line of the revolutionary war, respectfully report:

That it appears from papers on file in the State Department, extracts from which accompany this report, that Uriah Forrest was a major in the Maryland Line; that his commission was dated 1st January, 1777; that he was afterward promoted to the rank of lieutenant-colonel, his commission dating 17th April, 1777, and that he remained in service as lieutenant-colonel until the close of the war; that the said Uriah Forrest died on the 8th July, 1805, without having received the half-pay due him under the resolution of Congress of 21st October, 1780, and without having received the five years' full pay provided for by the law of 22d March, 1783, which declared that the officers who were entitled to half-pay for life might receive in lieu thereof five years' full pay in money or in securities bearing interest at the rate of six per cent.

It is proved by the affidavits of W. W. Corcoran, James Dunlop, and Anthony Hyde, filed with this report, that the memorialists, Ann Green and Maria Bohrer, are the daughters and only heirs-at-law of said Uriah Forrest.

The facts of the case are clearly established; there is no doubt in regard to the fact that Uriah Forrest was a lieutenant-colonel in the Maryland Line, and served to the close of the Revolutionary War. It is equally clear that the memorialists are his heirs-at-law.

The subject of the claims of officers and soldiers of the Revolutionary Army has been often before Congress. The last report made on the subject was made from this committee, on the 5th March, 1858, by Mr. Cragin. That report, and the various reports made part of it, are adopted as part of this report, to be printed with it.

It will be seen in all of them that the validity of claims of this character is fully recognized.

Your committee concurs in the opinions and conclusions enunciated in those reports. The resolve of October 21, 1780, and other acts of Congress, promising half-pay for life to the officers of the continental army who should serve to the end of the war, formed a contract between Congress and the officers of the army, founded upon a sufficient consideration, from which Congress cannot legally and justly retire. Lieut. Col. Uriah Forrest performed the contract on his part; Congress should perform its part of the contract; and as Lieutenant-Colonel Forrest died without receiving either the half-pay due him under the resolve of October 21, 1780, or the five years' full pay in lieu of his half-pay under the act of March 22, 1783, then his heirs-at-law succeed to his rights, and are entitled to whatever was due to him at his death.

The resolution of Congress passed June 3, 1784, provides: That an interest of six per cent. shall be allowed to all the creditors of the United States for supplies furnished or *services done* from the time that payment became due. In the case of Doctor Baird *vs.* The United States, in which half-pay for life was claimed under the resolve of October 21, 1780, interest was allowed upon the demand, and the decision of the Court of Claims was approved by Congress, and the claim paid at the Treasury.

The committee, therefore, report a bill for the relief of the memorialists upon these principles and recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, March 5, 1858.

Mr. CRAGIN, from the Committee on Revolutionary Claims, made the following report:

The Committee on Revolutionary Claims, to whom was referred "A bill to provide for the final settlement of the claims of the officers and soldiers of the revolutionary army, and the widows and children of those who died in the service," respectfully report:

That since the Revolution the claims of the officers of the continental army for the half-pay for life, promised them by various resolutions of the Continental Congress, have frequently been before the committee of this House, and received their favorable consideration. At the last Congress a report was made from the Committee on Revolutionary Pensions, by Mr. Broom, (see House report No. 31, 1st session 34th Congress,) in which the subject is so fully considered that the committee deem it unnecessary to enlarge upon the views therein expressed, but adopt it as a part of their report, to be printed therewith.

From an examination of that report, and various other documents relating to the subject, your committee have arrived at the following conclusions:

1. That the resolves of October 21, 1780, and other acts of Congress, promising half-pay for life to the officers of the continental army who should serve to the end of the war, or until the time of their reduction, formed a contract between the United States and the officers of the army, in their individual capacity, at a time when both were free to make it, founded upon a good and valid consideration.

2. That the officers fully performed and fulfilled the contract on their part, and by their services, sacrifices, and sufferings, gained the liberty and independence of the country.

3. That on the performance of said contract each officer, as an individual, acquired a *vested right of property therein*, of which he could not be divested "*without due process of law*," or by his own free and voluntary relinquishment, and any act of Congress impairing or affecting this right is repugnant to the Constitution, and void. Under this contract each officer became entitled from the United States to half-pay, according to the rank he held in the army from the close of the revolutionary war, or from the time of his discharge from the service until the period of his death, to be paid yearly and every year during that period, and for the performance of such contract on the part of the United States *the faith of the nation was solemnly pledged*. The committee also find that such officers were also entitled to an interest of six per cent. per annum on the yearly payments, and on the aggregate from the date of the officer's death to the time of settlement, under the resolution of Congress passed June 3, 1874, which provides "that an interest of six per cent. shall be allowed to all the creditors of the United States for supplies furnished or *services done*, from the time that payment became due." In alluding to this resolve, Chief Justice Gilchrist, of the Court of Claims, in a recent decision, says: "No language could be more express or free from doubt than this. The resolution was passed from a feeling that it was just and right that interest should be paid from the time the half-pay became due, and it was a voluntary contract on the part of the United States, constituting a legal claim against them which no subsequent legislation could release without the consent of the other party." The above contract for half-pay, although made under the confederation, is equally binding upon

Congress, for by the sixth article of the Constitution of the United States, section one, "all *debts* contracted or *engagements* entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation."

4. That on the 22d of March, 1783, an attempt to avoid the above contract and procure satisfaction thereof was made by Congress, under an act called the commutation act, by which it was proposed to commute the above life annuities for five years' full pay.

5. This act was manifestly unjust in compelling individuals to abide by the decisions of the *lines* of the Army, and placing the old and young on an equal footing. An officer sixty years of age might well commute his life annuity for ten years' half-pay in advance, while one of thirty would have a right, upon the principles which govern life annuities, to estimate his life at a much longer period. It wholly deprived the officers as *individuals* of the right to determine whether they would accept or refuse, and the committee have not been able to ascertain that the officers, either by *lines* or as *individuals*, ever gave their assent to the commutation. But if, under the pressure of their poverty, (for, be it remembered, the continental money in which their monthly stipends had been paid was nearly valueless,) they had assented, "it cannot be considered as a voluntary assent, but rather a submission to an uncontrollable and instant necessity, which admitted of no deliberation or delay." The resolve of Congress, an act of the Government, left them no choice except to abide by the decision of the *lines* and corps of the Army. They were entirely within the power of the Government, and could do nothing which presented better prospects for themselves.

6. The *money* was not paid, nor were the *securities* bearing an interest of six per cent., such as the act contemplated, or as the officers expected. The Government made no provision for the payment of either principal or interest of the commutation until long after the imperious necessities of the officers compelled them to part with the certificates for less than a year's pay. It is true, however, that paper certificates of service were issued by John Pierce, paymaster, payable to the officers or bearer, for five years' full pay, and many doubtless received them. They were worth, at the time of their issue, one-eighth of a dollar only; and not until after a period of about ten years, and most of them were in the hands of speculators, were they funded and paid by the United States. The loss of interest alone on the commutation of a captain, (\$2,400,) who lived to 1828, was \$2,536, and so in proportion to other officers; and this amount the Government saved by the commutation. (See Annals of Congress, vol. 4, part 1, for 1827-'28, page 441.)

"The commutation, then, is clearly liable to the following objections:

"1. That the commutation was not a valid accord and satisfaction for the half-pay for life.

"2. That it was so construed as to take away the rights of these officers under the resolve of October, 1780.

"3. Of not being an equivalent for the half-pay.

"4. Of not having been effected under circumstances and by the operation of motives which deprive it of all obligatory force.

"5. That according to strict legal construction, these officers did not commute their promised half-pay for life by accepting the so-called commutation certificates; they in no respect having been in conformity to the act.

"6. Of partial execution."

7. The reports of Mr. Madison in 1783, Mr. Nelson in 1810, Mr. Johnson in 1818, Mr. Sergeant, December 10, 1819, Mr. Hemphill, January 3, 1826, Mr. Burgess, May 8, 1826, and February 11, 1828; the act of May 15, 1828, Senator Walker's report in 1852, Senator Evans's, February 4, 1854, and Mr. Broom, April 4, 1856, show a repeated recognition of the contract on the part of Congress; *but* no general provision appears to have been made by Congress for the relief of these officers until the act of May 15, 1828, in which the contract of 1780 is fully recognized. They are there acknowledged as *creditors* of the Government, and not pensioners. That act, however, applies to the few surviving officers only, and made no provision for those who died before its passage.

In the very able report of Mr. Burgess, made February 11, 1828, the committee say: "That, in their opinion, the delivery of those certificates, as well on general principles as on those which govern courts of law and equity, did not annul the right of half-pay, or exonerate the Government from the obligations of the original contract. Such of those officers as had survived the war, and continued in the service until peace, became severally and individually vested with a complete right to the reward of half-pay for the residue of their lives. The reward was gallantly won at the point of the sword; it was the price of our independence, purchased with blood, and secured by *public faith*."

The Senate's Committee on Revolutionary Claims, May 11, 1838, say: "After an assiduous investigation the committee conclude that no legislation subsequent to the 21st of October, 1780, could, or by a fair construction did, contravene or in any manner impair the claim of the officers of the Army or any class of such officers to the half-pay promised them by the act of October 21, 1780. The half-pay for life contracted by the

act of October, 1780, to be paid to the officers of the Army for certain services to be performed by them *instantly*, became a *vested right*, of which subsequent legislation, nor nothing whatever, could divest the officer, save a failure on his part to perform the service; and it would be a libel on the good sense and justice of the distinguished statesmen and patriots of that period to imagine even that any legislation subsequent to the 21st of October, 1780, had for its object to impair the deliberate engagements made by that act to allow half-pay for life to the officers of the Army."

Your committee are of opinion that the contract of half-pay has not been fulfilled on the part of the Government, nor have the claimants been guilty of laches or neglect, for they have again and again presented and urged upon Congress the payment of their just demands. The claimants had no way in which to enforce their rights, and could only sue for them in the language of solicitation. Their rights may, in fact, be said to have been suspended by the judiciary act of 1789, and were never restored until the act of February 24, 1855, organizing the Court of Claims. Since the establishment of that court the cause of Doctor Baird *vs.* The United States has been decided, in which he claimed half-pay for life, under the act of October, 1780, his commutation of five years' full pay having been paid by special act of Congress. The court, per Gilchrist, chief justice, decided that the petitioner was entitled to the half-pay for life, and that the acceptance of a less sum than the half-pay by way of commutation was no discharge of the original contract, the payment of a sum of money not being of itself a discharge of a debt for a larger amount, and adds: "A plea of payment of a small sum in satisfaction of a larger is bad even after verdict," (2 Parsons on Contracts, 130, and notes.) The case was conceded not to be within any of the acts of limitation. The court allowed the demand *with interest*, and their decision was approved by both Houses of Congress, and the money paid at the Treasury. The high character of the Court of Claims, and action of Congress in carrying their decision into effect, is a judicial and legislative construction and declaration of the rights of other claimants founded upon the same contract and governed by the same rules of evidence. Considering, then, the commutation certificates as not amounting to an accord and satisfaction, the claim of Doctor Baird and those embraced in the bill are governed by the same principles.

The Union was formed "*in order to establish justice*;" and in accordance with the beautiful precept of Christianity to "owe no man anything, but to render unto all their dues," and in obedience to the *Golden Rule*, and laws of the land, we find that these officers and their heirs-at-law have a just, legal, and equitable demand against the United States; not a claim merely, but a subsisting demand, due *in presenti*, "a debt of honor which can never be discharged without payment." The committee, therefore, report the bill referred to them without amendment, and recommend its passage. It allows half-pay for life to the officers from the close of the Revolution to the date of their death, deducting therefrom all sums which have ever been paid to them by the Government by way of commutation or as *pay*, under the act of May 15, 1828. For the purpose of extending to the surviving children of the *soldiers* of the Revolution the benefits of the act of March 3, 1855, a section has been inserted for that purpose. The act referred to was doubtless intended to embrace their claims, but the word "*minor*" excludes them, as there are no "*minor children*" of the Revolution; and hence the necessity of further legislation in behalf of these meritorious claimants. The committee will add that bills embracing the principle contained in the bill herewith reported, so far as relates to the officers and their descendants, have passed the Senate and House of Representatives by large majorities, at different sessions of Congress.

The following is a synopsis of the bill:

Section 1 provides that the officers of the Army who were entitled to half-pay for life under the resolutions of Congress of 3d and 21st of October, 1780, 17th January, 1781, 8th of May, 1781, and 8th of March, 1785, shall be entitled to receive the same, although such officer may have received, in lieu thereof, the commutation of full pay for five years, under the resolution of Congress of the 22d of March, 1783.

Sec. 2. That it shall be the duty of the proper accounting officer of the Treasury, when applied to for that purpose by any one who by this act is entitled to receive, or his or her guardian, to ascertain what is due to such officer from the time he became entitled to said half-pay until the day of his death.

Sec. 3. That it shall be the duty of the Secretary of the Treasury, when the amount due to any officer has been ascertained as aforesaid, to pay the same, as hereinafter directed, after deducting therefrom the amount received for commutation under any special act of Congress, or under the resolution of March 22, 1783, and all sums received by such officer as *pay* or pension under the act of May 15, 1828.

Sec. 4. That the benefit of the resolution of the 24th of August, 1780, shall be extended to the widows and lineal descendants of all officers embraced therein who died in the service at any period during the war of the Revolution.

Sec. 5. Extends the benefits of the acts of March 3, 1855, and May 14, 1856, to the surviving children of the *soldiers* of the Revolution and persons provided for by those acts—(160 acres of land to the children of each soldier, &c.)

Sec. 6. The Secretary of the Treasury, under the direction and with the approbation

of the President of the United States, shall prescribe such rules of evidence as may be necessary to carry into effect the provisions of this act.

SEC. 7. All payments made by authority of this act shall be without interest.

SEC. 8. That in every case the said accounting-officer, before he shall order any claim to be paid, shall require satisfactory proof that the person or persons, in whose name the same may be presented, is or are the *bona-fide* owner or owners thereof, and that the claim has not been sold, transferred, or mortgaged, or any part thereof, to any person or persons whomsoever; and all sales, transfers, mortgages, or pledges of any such claims are hereby declared void and of no effect whatever.

SEC. 9. That surgeons' mates shall be entitled to the benefit of the resolution of the 17th of January, 1781, and receive the same pay as hospital physicians and surgeons.

SEC. 10. That all persons who apply for and receive the benefit of this act shall receive the same in full satisfaction of all claims under any of the resolutions of Congress hereinbefore recited, and for all losses alleged to have been sustained by depreciation in the value of the certificates received as commutation under the resolution of Congress of the 22d March, 1783.

SEC. 11. That all claims which shall be allowed under the first section of this act shall be paid to the officer, if alive; and if he be dead, to his child or children equally; and if there be none living, then to his grandchildren or children, or their descendants, the issue of any deceased child taking among them the share of their deceased parents, and, in case there be no lineal descendant, then to the next of kin of such deceased officer.

SEC. 12. That the Secretary of the Treasury, instead of paying directly, as provided for in section 11, may, in his discretion and under such rules and regulations as he shall prescribe, pay the claims allowed under this act to the administrator, executor, or curator of such deceased officer, for the sole and exclusive benefit of his child or children, or their descendants, or next of kin, to be distributed among them according to the provisions of section 11 of this act; and the same shall not be considered as part of the assets of said estate, nor applied to the payment of the debts of said estate in any case whatsoever.

SEC. 13. That all payments under this act shall be made in treasury notes, bearing an annual interest at six per cent. from the time of their issue, and be redeemable at the pleasure of the Government of the United States.

SEC. 14. This act shall continue and be of force for the term of ten years and no longer; and all claims not presented, with the evidence, for their adjudication within that time, shall be forever barred.

SEC. 15. That the decision of the accounting-officer shall be final and conclusive.

IN THE HOUSE OF REPRESENTATIVES, *April 4, 1856.*

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following report:

The Committee on Revolutionary Pensions, to whom were referred the petitions of divers persons, praying for the full benefit of sundry resolutions of the Continental Congress for the relief of the officers of the continental army, their widows and orphan children, and House bill No. 154, to provide for the settlement thereof, have had the same under consideration, and present the following report:

That they have carefully examined the memorials, and given the subject all the consideration which its importance demands. The incidents of the Revolution, the great results of that struggle for liberty, and the happiness conferred by its accomplishment upon millions of freemen, would occupy volumes. The history of the period shows that at the commencement of the contest, in 1776, the population of the country was exceedingly sparse, and Government so poor that many of the officers were obliged to arm and equip their own companies; and instances were frequent where their entire fortunes were devoted to the cause of their country. The continental bills, in which their monthly stipends were paid, had so depreciated that at the close of the year 1780 they were almost valueless. The money which they actually received was wholly inadequate for their own wants, while their families at home were often destitute. Under these circumstances, the Commander-in-chief frequently presented to Congress the situation of the Army, and urged the necessity of having some permanent provision for such officers as would remain in the service to the end of the war. In one of his letters, addressed to Congress on the 20th of August, 1780, he says: "On the whole, if something satisfactory be not done, the Army (already so reduced in officers, by daily resignations, as not to leave a sufficiency to do the common duties of it) must either cease to exist at the end of the campaign, or it will exhibit an example of more virtue,

fortitude, self-denial, and perseverance than has ever yet been paralleled in the history of human enthusiasm. The dissolution of the army is an event which cannot be regarded with indifference. It would bring accumulated distress upon us; it would throw the people of America into a general consternation; it would discredit our cause throughout the world; it would shock our allies. To think of replacing the officers with others is visionary. The loss of the veteran soldiers could not be repaired." In compliance with General Washington's recommendation, Congress, on the 21st day of October, 1780, passed a resolution in the following words: "*Resolved, That the officers who shall continue in the service to the end of the war shall be entitled to half-pay for life, to commence from the time of their reduction.*"

This resolution may well be said to have formed a contract between the Government and the officers at a time when both were free to make it, and its happy effect upon the army was soon seen and felt. In a letter from General Washington to Congress, in 1783, he says; "That in the critical and perilous moment when the last-mentioned communication was made there was the utmost danger that a dissolution of the army would have taken place, unless measures, similar to those recommended, had been adopted, will not admit of doubt; that the adoption of the resolution granting half-pay for life has been attended with all the happy consequences which I foretold, let the astonishing contrast between the state of the army at this instant and at the former period determine." And in the same letter he urges, with eloquent appeals, that justice and good faith require that Congress should make provision for "the payment of all just demands of the Army."

When the promise of half-pay for life was made, the war had been in progress for five years, and it was uncertain how long it would continue; it might last for ten or twenty years, but the certainty of a competency to the officers after the contest should cease, although it afforded no immediate relief, cheered them on, and enabled them at length, at the risk of their lives, with the aid of their brave associates, and under the favor of Heaven, to perform the contract on their part, and achieve the liberty and independence of the country. The war closed in 1783, and, owing to the inability of Congress to pay the army, it was furloughed first for six months, and then indefinitely; and in this way, as your committee are informed, the army of the Revolution was disbanded. About that period some dissatisfaction having arisen at the half-pay system, a proposition was made to commute the half-pay for life for five years' full pay; and, on the petition of seventeen officers only, Congress passed an act (see law of March 22, 1783,) declaring that the officers who were entitled to half-pay for life might receive, in lieu thereof, five years' full pay in *money* or securities, bearing an interest at six per cent.; which commutation was to be accepted by *lines* and States, and not as individuals. This law, called the commutation act, was on its face unjust and unequal; for while an officer of sixty years of age would willingly commute his life annuity for five years' full pay in advance, another of thirty might reasonably estimate his life at a much longer period. No one will contend that Congress could annul, vary, or rescind the contract of half-pay for a less sum, without the assent of the officers as individuals; and the committee have been unable to ascertain that a majority of them, either by lines or as individuals, ever gave such assent. The effect of this arrangement was to subject the individual, as to his own particular rights, to the decision of others. If the officer had been left free to make his choice, and, having made it, the Government had given him what he freely consented to receive, he may have been concluded. But he was not so free. The resolve of Congress, an act of the Government, and a law, left him no choice but to abide by the decision of the lines and corps of the Army, or wait, whatever might be his wants, till a more fortunate period should enable him to approach that body, not with power to enforce his right, but only to sue for it in the language of solicitation. But if such assent was given, the offer to compromise was not fulfilled by the Government; for when the officers called for their "*money*" or specie at the Treasury, they were turned away with paper certificates, worth in gold and silver, on the day of their date, as the records abundantly show, only one-eighth of their nominal value. For instance, a lieutenant's full pay for five years was by commutation \$1,600, and that sum, in "*money*," in those days of severe economy, and when money was worth more than double its present value, would have enabled him to set out in life with reasonable hopes of a competency for himself and family; but when he came to realize that his certificates were worth only \$200, less than a years' pay, he could only lament the poverty and protest against the injustice of the Government in forcing them, as it were, upon him. There was no basis for them upon which to rest, nor any provision made for the payment of the principal and interest, until long after the imperious necessity of the officers compelled them to part with their paper for one-eighth of its nominal value. (See Senate Report of January 3, 1826.) The certificates were, however, many years after the war, finally funded and paid by the United States; but it may well be said that the commutation law and proceedings under it were a violation of the contract as contained in the resolution of October 21, 1780, and that the officers were not bound or concluded thereby, either at law or in equity, beyond the amount received by them under it.

The claims of these officers have repeatedly been presented to Congress, and as often received favorable reports from committees of the highest character for learning and ability. The first report upon these claims was made by Mr. Madison, on the 23d of April, 1783, in which he fully recognizes their justice. Again, in 1810, a committee of the House declare, "*that the contract entered into by Congress with the officers of the revolutionary army, allowing them half-pay for life, has not been substantially complied with by our Government;*" and they recommend the following resolution: "*That the prayer of the petitioners is reasonable, and ought to be granted.*"

No law was, however, passed at that session, and the war of 1812 soon followed; and the subject does not seem to have been considered again until 1818, when Mr. Johnson, from a select committee of the House to whom the subject was referred, made a report in favor of the memorialists.

On the 10th of December, 1819, another able report in favor of these claims was made in the House of Representatives by Mr. Sergeant, from the select committee to whom the subject was referred, in which, after reviewing the whole subject, he says: "It seems to your committee just and reasonable, and becoming the faith of the nation, to execute the contract originally made, upon the terms proposed by the memorialists; that is to say, of deducting from the arrears of half-pay, computed from the cessation of hostilities to the present time, the full nominal amount of the commutation certificate, and paying to the surviving officer the balance, and henceforward, during the remainder of their lives, paying them the half-pay stipulated by the resolve of 1780."

On the 3d of January, 1826, another report was made in the Senate in favor of these claims. Among other things, the committee say: "By virtue of these resolves (the half-pay resolutions) a solemn contract between the Government and the officers was made. It originated and was consummated by the free and unbiased will of the parties, without surprise or compulsion on either side. It has been most gallantly performed by the officers; and after a bloody conflict of eight years, and when the liberties and independence of their country were secured, following the example of the celebrated Roman, they retired with cheerfulness to their private citizenship.

"It seems to the committee that the performance of a contract on such an occasion, and especially one which has produced such boundless consequences, ought to be observed on the part of the Government with profound sanctity; and that nothing, therefore, but the free expression of the will of both parties, unaffected by necessitous circumstances, ought to be allowed to abrogate or rescind it."

At the same session, (1826,) Mr. Burgess, of Rhode Island, a statesman of great astuteness, made a favorable report; and the same member, on the 11th February, 1828, made another able report, though no definite action upon it seems to have been had. After an elaborate view of the subject, the committee remark: "The certificates had no funds whereon to rest, and their market-value was not equal to one year's pay. And it appears to your committee too much to say that the delivery of this almost valueless paper was a payment in money according to the sense of the offer, or that these certificates were the securities intended thereby, either according to the common understanding of the term, or the distinction expressly made in the resolve itself, between securities and certificates. * * * * * Under these circumstances, your committee, in the choice of alternative, are obliged to say that, in their opinion, the delivery of these certificates, as well on general principles as on those which govern in courts of law or equity, did not annul the rights to half-pay, nor exonerate the Government from the obligations of the original contract in this regard."

In 1852 this subject was again presented to the Senate, on the petition of the heirs of Lient. Benjamin Moore, and fully considered by the Committee on Revolutionary Claims, consisting of Messrs. Walker, of Wisconsin, James, of Rhode Island, Sumner, of Massachusetts, Foot, of Vermont, and Chase, of Ohio. They gave the subject the most careful and laborious examination, and the result of their labors may be found in the Senate report No. 164, first session 32d Congress, and its perusal is commended to those who desire a knowledge of the subject.

No definite or final action appears to have been had on said report.

On the 4th of February, 1854, the subject was again brought forward in the Senate by Senator Evans, of South Carolina, who made a very able report, accompanied by a bill, (No. 186,) which subsequently passed the Senate, but was not acted upon in the House. The Committee on Revolutionary Claims, to whom it was referred, agreed upon a report, a copy of which is herewith presented, but it was not made in the House, as the chairman (Hon. R. W. Peckham) states, "for lack of opportunity." The subject was again brought forward in the Senate, and a report made by Senator Evans—No. 7, 1st session 34th Congress, (present session)—accompanied by bill No. 109. The bill which the committee present proposes substantially to carry out the laws of the Continental Congress, by allowing the half-pay for life, without interest, from the close of the Revolution, in 1783, to the period of the officer's death, provided that event took place previous to March 3, 1826; but if after that time, then up to that day, deducting the full amount of the commutation certificates. The bill makes the amount which may be found due under it, in case of the officer's death, payable to the widow and children of

the officer equally; and if no widow, then to his child, children, or grandchildren, the issue of any deceased child taking among them the share of their deceased parents. The bill proposes to deduct from the half-pay to which any officer or his descendants are entitled the amount which has been received by way of commutation under a general or special act of Congress, and to pay the balance without interest. It also provides for those who were killed or died in the service. All those officers who died previous to 1793 will not derive any benefit under this bill, and its value to others will depend upon the time they lived after that period, and the rank they held in the Army. The whole number of continental officers entitled to half-pay, according to an estimate of Senator Evans, is about..... 2,300

From which deduct for families which have become extinct, those who died previous to 1793, and those unable to make out their claims—say one-half 1,150

Leaving the number to be provided for..... 1,150

Assuming the half-pay of a captain as the average at \$240 per annum, and the lives of the officers at twenty years, ten years of which is covered by the commutation certificates, and it will require, to pay these men and their representatives within the next ten years, the sum of \$2,760,000, or in round numbers, three millions. This sum divided among 27,000,000, our present population, would require about one cent from each inhabitant to cancel the debt.

The annual amount which will be disbursed in the settlement of these claims will not exceed the sums which we have expended in payment of revolutionary pensioners. Of the fifty-four thousand admitted to the roll, only about seven hundred remain, and these are rapidly passing away. It is hardly necessary to go into a minute estimate of the sums which may be drawn from the Treasury under this bill, for, if the justice of these claims be admitted, it is refreshing to know that the income of our Government for about twenty days will pay them, to say nothing of the millions upon millions hoarded in our National Treasury, and withdrawn from general circulation. We have abundant means to discharge these demands; and if they required the whole money in the Treasury, we ought to pay them, and relieve the nation of the solemn obligation which rests upon it.

The widows and children of these officers are scattered throughout the Union, and many of them are living in poverty, while some are supported by charity. And although a long period has elapsed since "these old creditors of the country" were entitled to their money, the delay cannot justly be attributed to them, for they have again and again urged, and will continue to urge, the payment of their just demands. Nor is there any want of record-evidence of these claims, for the committee have ascertained that the public archives contain full and perfect returns of the name and grade of every officer embraced by the bill, together with the dates, numbers, and amount of his commutation certificates; and the records of Congress are replete with evidence that no payment to these men has ever been made. If it be said that these claims are barred by lapse of time, it may be answered that they have repeatedly been urged upon and recognized by Congress as just and due; and a noble nation never pleads the statute of limitation against its own citizens.

In the Senate report to which we have alluded, (No. 174,) the committee say: "The men who held the destiny of this nation in their hands have now nearly all passed away, yet there remains on the journals of Congress an unredeemed pledge of the national faith: *the resolution of the 21st of October, 1780, stands unfulfilled on the part of the Government.* The circumstances which prompted the passage of this resolution mark it as a monument of necessity and wisdom. That necessity emanated, not from want of patriotism in the officers, but from stern domestic obligations resting upon many of them toward their wives and parents, who were dependent on them for support, whose wants could not be supplied from their small stipends, irregularly paid, and these only in a depreciated currency. That resolution, though it relieved nothing of present necessity, gave confidence and hope for the future, and brought more zeal and energy to the defense of the national liberties. To evidence the necessity and wisdom of the measure, the committee refer to the testimony of General Washington, in a series of letters written to Congress, at different periods from 1778 to 1783, at whose instance the resolution of 1780 was evidently adopted. What its necessity, object, and utility were, will fully appear in that correspondence. The current testimony of Congress, in numerous instances, corroborates all the documentary history of that period, awarding the praise and gratitude, and solemn faith of the nation, to the soldiers and officers of the revolutionary army. At that time it had nothing else to give, and with self-denial and sacrifice unparalleled in the history of the world, that army, having successfully won by their arms the independence of their country, and for their patient endurance the admiration of the world, surrendered their half-pay annuities, and suffered themselves to be disbanded and discharged with a very small pittance of pay, and that in nearly a worthless medium, and return to their families and friends destitute of any adequate means to establish themselves in civil life. The committee deem it unneces-

sary to add anything to that which has been so well said in the reports and letters quoted, and concur in the sentiment *that good faith, justice, and honor demand that we no longer withhold payment from these old creditors of the country.*"

The committee further report House bill No. 154, referred to them, and recommend its passage, with the following amendments, to wit:

In section 5, 4th line, strike out the words "half-pay of a lieutenant of infantry," and insert in lieu thereof the words "same pay as hospital physicians and surgeons."

In section 9, strike out all after the enacting words, and insert the following: "That this act shall not extend to the case of any officer, or his representatives, who have received either half-pay for life, or commutation in lieu thereof, under any special act of Congress."

In section 11, strike out all after the enacting words, and insert the following: "That all claims which shall be allowed under the first and fifth sections of this act shall be paid to the officer, if alive; and if he be dead, to his widow and children equally; and if there be no widow living, then to his child, children, or grandchildren—the issue of any deceased child taking among them the share of their deceased parent; and to no other persons."

HEIRS OF CONTINENTAL OFFICERS.

Report to accompany bill for the final settlement of the claims of the officers of the revolutionary army, and of the widows and orphan-children of those who were killed or died in the service.

The Committee on Revolutionary Claims, to which sundry memorials on the subject have been referred, do, by their chairman, ask leave to report a bill for the final settlement of the claims of officers of the revolutionary army, and the widows and orphans of those who died in the service.

In reporting this bill and recommending its passage, your committee respectfully submit the following statement and remarks:

The provisions of the bill are founded on certain resolutions of the Old or Continental Congress, and copies of those referred to in the first section of the bill are appended to this report.

It will be seen that they created a *solemn contract* between the Government and those officers who served to the end of the war, to the performance of which the faith of the Government and the nation was pledged.

It is admitted that that pledge has never been fully redeemed, and that most of that class of officers who performed *their* part of the contract have descended to the grave, leaving their widows and children to claim the fulfillment of it on the part of the Government.

The bill herewith reported proposes to accomplish that object, as far as circumstances will admit.

Your committee deem it unnecessary to enter into an explanation of the provisions of the bill, as they are sufficiently explained by the bill itself, in connection with the resolutions of Congress referred to in it.

It will be seen that the bill proposes to deduct from the allowance of half-pay (without interest) granted to the parties interested, the full amount of commutation certificates for five years' full pay issued under the resolution of March 22, 1783, in lieu of the half-pay promised by the resolutions referred to.

Your committee will not go into a history of the circumstances under which those commutation certificates were forced upon the officers to whom they were issued.

It is sufficient to say that the officers were induced by their poverty and necessities, and the condition of the finances of the Government and country, to accept them; and that, as is alleged, and your committee believe truly, owing to the same causes, they were compelled to part with those certificates at a great depreciation, and the original holders realized only about twelve and a half per cent. of their nominal value. But, as they were afterwards paid by the United States at their full amount, it is deemed proper to deduct that amount from the claims for half-pay allowed by the bill.

The justice of the claims provided for by the bill has been repeatedly recognized in Congress by committees and distinguished members of both Houses.

In April, 1783, Mr. Madison made a report in their favor, in which he fully recognizes their justice.

Again, in 1810, a committee of the House of Representatives "*Resolved*, That the *contract* entered into by Congress with the officers of the revolutionary army, allowing half-pay for life, has not been substantially complied with by our Government."

Again, in 1818, Mr. Johnson, from a select committee of the House, made a favorable report on these claims. And in December, 1819, another able report in their favor was made by Mr. Sergeant.

Also, in January, 1826, another favorable report was made in the Senate; and at the

same session, and also in February, 1828, Mr. Burgess, of the House, made reports in favor of these claims.

In addition to this accumulation of opinions in their favor, may be added the fact that a large number of private acts allowing half-pay to certain officers of the class embraced in the bill have been passed by Congress at different periods since the Revolution.

But your committee beg leave to call the special attention of the House to the action of Congress in relation to claims for half-pay of certain officers of the Virginia State troops and navy and of the line of that State.

By the act of Congress of 5th July, 1832, the accounting officers of the Treasury are required to liquidate and pay the accounts of the Commonwealth of Virginia against the United States, for payment to the officers commanding in the Virginia line in the war of the Revolution, on account of half-pay for life promised the officers aforesaid by that Commonwealth, &c.

And the Secretary of the Treasury is required by the same act "to pay to the State of Virginia the amount of the judgments which have been rendered against the said State for and on account of the promises contained in an act passed by the legislature of that State in the month of May, 1779, in favor of the officers or representatives of the officers of the regiments and corps in said act of Congress mentioned, being officers belonging to the State troops or navy of Virginia."

Your committee refer to the act of 5th July, 1832, at large, for further particulars, with the remark that since Congress has provided for and paid the half-pay claimed not only by officers of the line of Virginia, but of the State troops and navy of that State, founded upon promises made by the State, it seems to be unnecessary to cite any other or stronger precedent in favor of the claims provided for by the bill reported by your committee, founded on similar promises made by the Congress of the *United States*.

It may be proper for your committee to submit some remarks upon the probable amount of the draught which may be made on the Treasury by the bill, if it becomes a law.

In reply to anticipated objections and exaggerated statements on this subject, your committee would respectfully refer to the estimates made by Senator Evans, in his speech in the Senate, upon a similar bill reported by him to that body.

That speech was reported in the "Congressional Globe" of 19th April last, (1854.)

The honorable Senator states that "the highest amount at which the officers of the Revolution have ever been estimated was *two thousand four hundred and eighty*; but it does not appear from the books of the Treasury Department that more than *two thousand two hundred and fifty-six* have ever received commutation or half-pay."

He goes into a calculation to show that the average of the half-pay of all the officers would be two thousand four hundred dollars, after deducting as the bill proposes, the commutation which has been received by each; and that "the largest amount, supposing that the descendants of all of whom we have any record come in and receive under the bill, will be five million five hundred and twenty thousand dollars.

He then goes into another calculation to show the number of officers whose widows or descendants may probably claim under the bill, and arrives at the conclusion that their number will not exceed seventeen hundred and twenty-five; and that if the descendants of every one of that number should apply, their claims upon the Treasury would not exceed four million one hundred and forty thousand dollars.

He also makes an estimate founded on the number of pensioners under the act of 15th May, 1828, "that the descendants of not more than twelve hundred and forty-four officers can now make any claim under this bill, and that 'the total amount necessary to be appropriated for the entire extinguishment of all the claims likely to come in under the bill, is two million nine hundred and sixty thousand six hundred dollars'—a little less than three millions."

Your committee have not tested the accuracy of the estimate made by Senator Evans by any calculation of their own; but relying with great confidence upon his opinions and judgment in the matter, respectfully refer the results above stated to the consideration of the House.

If it be admitted, however, that the demands of *bona-fide* claimants under the bill should exceed even the highest estimate above made of the total amount, your committee apprehend that it would not be a sufficient reason for refusing to pay them.

With a full Treasury and an annual revenue of about seventy millions of dollars, there ought not to be any hesitation to pay a debt, the justice of which has been often acknowledged and never denied, and which has been repeatedly, within the last fifty years, asked for in vain until the present time.

Another consideration which may have some weight, in a financial point of view, in favor of the bill, is the rapid decrease in the number of revolutionary officers and soldiers, whose pensions, to a large amount, have been a charge upon the Treasury in years past.

The following facts on that subject, derived in part from the last report of the Commissioner of Pensions, is respectfully submitted:

The whole number of persons who have been pensioned under the act of 18th March, 1818, is about twenty thousand.

They are now reduced by death to only one hundred and seventy-five. The whole number pensioned under the act of 15th May, 1828, is believed to be about fifteen hundred. There are now only eighteen on the list under that act.

The whole number pensioned under the act of 7th June, 1832, is about thirty-four thousand, of whom only eight hundred and seventy-six remain on the list.

These are the only general laws under which the officers and soldiers of the Revolution have been pensioned; and according to the report of the Commissioner of Pensions there are only one thousand and seven-fifty now living, to receive the bounty of their country, not one of whom can be less than ninety years of age. The total amount paid during the year ending September 20, 1854, according to the table B of the Commissioner's report, to these three classes of pensioners, was only \$75,445, instead of the millions annually appropriated and paid to them in former years. And your committee would remark, in connection with these facts, that the claims under the bill will not be an *annual* charge upon the Treasury, but, when once paid, are finally and forever disposed of.

In concluding this report, your committee abstain from making any appeal to the patriotic feelings or natural sympathies of the House; justice rather than sympathy is what the claimants expect, and what they have a right to demand, in regard to these long-neglected claims.

But instead of any such appeal, your committee prefer to quote the language of the illustrious Washington, in relation to these very claims. In a letter dated at Newburgh, June 18, 1873, he thus expresses himself:

"That provision [alluding to the half-pay resolution] should be viewed as it really was, a reasonable compensation offered by Congress, at a time when they had nothing else to give to the officers of the Army for services then to be performed. It was the only means to prevent a total dereliction of the service; it was a part of their hire; I may be allowed to say it was the price of their blood and of your independence. It is, therefore, more than a common debt; it is a debt of honor; it can never be considered as a pension or gratuity, nor canceled until it is fairly discharged."

All of which is respectfully submitted.

MARCH, 1855.

The Committee on Revolutionary Claims agreed to the substance of the within report, but it was not made to the House at the last session, for the sole reason of a lack of opportunity to do so, after such agreement. In my judgment, the amount appropriated by the bill will be less than supposed by Senator Evans.

R. W. PECKHAM,

Chairman Committee Revolutionary Claims, last House of Representatives.

ALBANY, October 15, 1855.

Copy of the resolutions referred to in the first section of the bill.

RESOLUTION OF OCTOBER 21, 1780.

Resolved, That those officers who shall continue in service to the end of the war shall be entitled to half-pay for life, to commence from the time of their reduction.

RESOLUTION OF JANUARY 17, 1781.

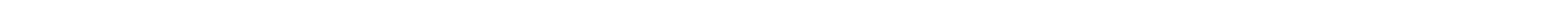
Resolved, That all officers in the hospital department and medical staff hereinafter mentioned, who shall continue in service to the end of the war, or be reduced before that time, shall be entitled to and receive during life, in lieu of half-pay, the following allowance, viz: The director of the hospital equal to the half-pay of a lieutenant-colonel; chief physician and surgeon of the Army, and hospital physician and surgeon, purveyor, apothecary, and regimental surgeons, each equal to the half-pay of a captain.

RESOLUTION OF MAY 8, 1781.

Resolved, &c., That every chaplain deemed and certified to the board of war to be a supernumerary be no longer continued in service, and be entitled to have their depreciation made good, and to the half-pay of captain for life.

RESOLUTION OF MARCH 8, 1785.

Resolved, That officers who retired under the resolve of 31st December, 1781, are equally entitled to half-pay or commutation with those officers who retired under the resolves of 3d and 21st October, 1780.



IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. KELLY submitted the following

REPORT :

[To accompany bill S. 381.]

The Committee on Public Lands, to whom was referred Senate bill 381, report as follows :

It is proposed by this bill to create a new land-district in the State of Oregon, to be called The Dalles land-district, and lying wholly in what is known as Eastern Oregon. It extends south from the Columbia River about one hundred and fifty miles, and east from the Cascade range of mountains about one hundred and ten miles, and embraces within its limits one hundred and thirty-four townships of surveyed lands, containing an area of 3,087,360 acres. A large portion of this was surveyed within the past year, in order to accommodate persons who had already settled on these public lands, or who propose to do so the present year. The population, numbering about 8,000, is rapidly increasing, and is chiefly engaged in farming and stock-raising, for which purpose these lands are well adapted, and for which they are being occupied. The settlers, however, labor under difficulties and embarrassments in entering and perfecting the titles to their pre-emption and homestead claims, owing to the great distance they live from the United States land-offices at Oregon City and Le Grande. Some of them have now to travel two hundred and twenty-five, and none less than seventy, miles for this purpose. By the creation of the proposed new district, and the location of a land-office at The Dalles, nearly all the settlers will be saved the time and expenses of traveling from The Dalles to Oregon City, a distance of one hundred and fifteen miles; and doubtless it will be the means of hastening the settlement of that vast extent of country, by making it more easy for the settlers to acquire titles to the lands upon which they reside. The Government owes much to its early pioneers, by whose energy and labor the country is improved, and the public domain greatly enhanced in value. It is due to them, therefore, that every facility consistent with public economy should be afforded which the Government can give.

The committee, for these reasons, recommend the passage of the bill.

THE STATE OF THE UNITED STATES

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IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 1948.]

The Committee on Pensions, to whom was referred the bill (H. R. 1948) granting a pension to Mary J. Blood, have had the same under consideration, and report :

While satisfied the testimony in the case is sufficient to sustain the House report upon which the bill is based, and to justify us in recommending the passage of the House bill, with an amendment, we deem it no more than just to state, it was not of that clear and unquestionable character to leave no doubt of the origin of the disease, or as to whether it was contracted in the service, or was the cause of the death of the soldier; and there might, therefore, be good ground for the rejection of the claim by the Pension Bureau. We give the benefit of all doubt in the case to the widow; and, therefore, recommend the passage of the bill, with the following amendment: In lines 8, 9, and 10 strike out the words "commencing at the death of said Emory H. Blood, on the thirteenth of November, eighteen hundred and sixty-eight."

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BY THE SECRETARY OF THE COMMISSION

1874-1875—Original to be retained

The Commission on the subject of the following

REPORT

(The Commission on the subject of the following)

The Commission on the subject of the following
has the honor to acknowledge the receipt of the following
report, and to report:

At this point the testimony in the case is sufficient to sustain the
report upon which the bill is based, and to justify its passage.
The passage of the House bill, with an amendment, is deemed
advisable, as it is not of that character and importance
as to leave no doubt of the origin of the disease, or as to
whether it was contracted in the service, or was the cause of the death
of the soldier; and there might, therefore, be good ground for the re-
jection of the claim by the Pension Bureau. We give the benefit of all
doubt in the case to the soldier; and, therefore, recommend the passage
of the bill, with the following amendment: In lines 8, 9, and 10 strike
out the words "commencing at the death of said Henry M. Blood, as
testified of November, eighteen hundred and sixty-eight."

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

[To accompany bill H. R. 1945.]

The Committee on Pensions, to whom was referred the bill (H. R. 1945) granting a pension to Juliet E. Hall, daughter of Col. William Hall, late colonel of the Eleventh Iowa Volunteers, have had the same under consideration, and respectfully report :

That it appears from evidence on file in the case No. 193022, Pension Bureau, that the mother of Juliet Hall applied for a pension as the widow of Col. William Hall, which was refused because it did not sufficiently appear that the disease of which he died was contracted in the service. Subsequently the widow applied to Congress, and in March, 1869, a special act was passed granting her a pension of \$30 a month. In November following the widow of Colonel Hall married a Mr. Guild, when her pension was suspended; she thereupon again applied to the Pension Bureau as guardian for her daughter Juliet E. Hall, the beneficiary in the present bill, for a pension, and was again denied a pension because of doubt as to whether the disease was contracted in the service of which the father, Col. William Hall, died. Petitioner is the only child of Col. Hall, who was mustered into the service as colonel of the Eleventh Iowa Volunteers, 9th of November, 1862; served until August 1, 1864, when honorably discharged from the service, and died December, 1865. The evidence of Dr. John G. Miller, surgeon of the regiment, and Dr. Baker, of Davenport, Iowa, who treated him in his last illness, clearly establishes that the disease of which Col. Hall died was contracted in the service, in the line of duty, by a fall from his horse. Dr. Davis, who was also a surgeon in the service, thinks he was not a sound man when he entered the service, but testifies that the hardships of the service developed disease upon him, and precipitated his death, and expresses the opinion that a pension should be granted. It clearly appears that Col. Hall was an efficient, faithful soldier, and left the service only on account of failing health, from which he soon died; his daughter is now about eleven years old, in indigent circumstances. We think there can be no reasonable doubt her father's death was caused by service in the field and in the line of duty, and believe that justice requires that his minor daughter should receive the benefit of our pension laws. We therefore recommend the passage of the House bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 2356.]

The Committee on Pensions, to whom was referred the bill (H. R. 2356) granting a pension to Edward Jardine, have had the same under consideration and submit the following report:

Strike out in the 8th, 9th, 10th, and 11th lines the words, "and in case of the death of the said Edward Jardine, the amount of pension allowed by this act shall be continued to his minor children, under the provisions and limitations of the general pension-laws," and with this amendment the committee report favorably as to Edward Jardine, and recommend the passage of the bill as amended.

IN THE SENATE OF THE UNITED STATES

March 27, 1907.—Ordered to be printed.

Mr. GILBERT submitted the following

REPORT:

[To accompany H. R. 10000]

Committee on Finance, to whom was referred the bill (H. R. 10000) providing a pension to Edward Loring, and for the same purpose, and to submit the following report:

Enacted in the 5th, 23d, 19th, and 11th years of the life of the said Edward Loring, the amount of pension provided by this act shall be continued to his minor children, under the provisions and limitations of the general pension-law, and with this amendment the committee report favorably as to Edward Loring, and recommend the passage of the bill as amended.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Nancy Flesher, praying for a pension on account of the death of her son James Flesher, submit the following report :

It appears from the evidence that about the first of July, eighteen hundred and sixty-one, Col. E. B. Tyler, of the Seventh Ohio volunteer infantry, finding it necessary in marching through the mountains of West Virginia to have guides and scouts familiar with the mountain-passes, fords, and paths of the region he was traversing, employed the said James Flesher in that service, who continued for some time to act as guide, scout, and bearer of dispatches, until in the performance of his duty he was intercepted by bushwhackers and rebel cavalry and killed at Birch River, Nicholas County, West Virginia. Young Flesher was not an enlisted man, nor is there any evidence as to the compensation paid or promised him for his dangerous services.

Colonel Tyler says he would have enlisted but for his untimely death, and that he was promised a non-commissioned officer's position in the regiment as soon as his services as scout, &c., could be dispensed with, and that this promise was made because of Flesher's prompt, efficient, and meritorious services.

In the present state of the case the committee must report adversely upon this petition because there is no proof of the mother's dependence upon this son, in whole or in part, at the time of his death. There is a more general ground of objection growing out of the fact that this young man was not an enlisted soldier nor killed in battle. We do not say that this would be an insuperable objection on the facts in this particular case; but as no case of dependence has been made out, the committee ask to be discharged from the further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of George Richards for pension, submit the following report :

There is no evidence to show the grounds for arrears or for increase of pension. The committee therefore recommend the indefinite postponement of the petition, and ask to be discharged.

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IN THE SENATE OF THE UNITED STATES

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IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 581.]

The Committee on Public Lands, to whom was referred a letter from the Secretary of the Interior, with other communications, on the subject of the Yellowstone Park, have had the same under consideration, and report:

We recommend the passage of the bill submitted, with the letter of the Secretary of the Interior, to the consideration of Congress, except that section 5 of said bill be amended so as to read: That the sum of twenty-five thousand dollars be, and the same is hereby, appropriated for the survey of its boundaries, and for such other purposes as may be deemed necessary in the judgment of the Secretary of the Interior to accomplish the ends contemplated by this act and the act of March 1, 1872; said appropriation to be expended under the direction of the Secretary of the Interior.

IN THE SENATE OF THE UNITED STATES

REPORT

OF THE

COMMISSIONERS

OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE, MARCH 18, 1854, RELATIVE TO THE LANDS BELONGING TO THE UNITED STATES, AND THE PROCEEDINGS THEREON, FROM 1846 TO 1854.

WASHINGTON: PUBLISHED BY THE SENATE, UNDER THE AUTHORITY OF A RESOLUTION PASSED BY THE SENATE, MARCH 18, 1854.

1855.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Susan McGoulrick, have had the same under consideration, and respectfully report:

That there is no law under which a soldier in the Army dying in the service in time of peace can obtain a pension. The only question presented by this petition is, whether it will now be good policy to enact such a law to include in a class all such cases, for it would in no sense be just to favor this or any similar individual claim. The committee are not inclined to such a law, and must therefore in this case report adversely.

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THE UNITED STATES OF AMERICA

REPORT

THE SECRETARY OF THE ARMY

REPORT

The following is a summary of the report of the Secretary of the Army, dated 10th March 1900, and is intended to be read in connection with the report of the Secretary of the Navy, dated 10th March 1900.

There is no report of the Secretary of the Army, dated 10th March 1900, and is intended to be read in connection with the report of the Secretary of the Navy, dated 10th March 1900.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. PATTERSON submitted the following

R E P O R T:

The Committee on Pensions, to whom was referred the petition of Esther M. Shubrick, having had the same under consideration, submit the following report:

Petition of Esther M. Shubrick, widow of the late Captain Edward R. Shubrick, of the United States Navy, asking for increase of pension, shows that under act of August 11, 1848, she was granted a pension of \$50 per month, which she continued to receive until it was reduced to \$30 per month, under the 13th section of act of July 27, 1868. That section provides that the 3d section of act to increase the pensions of widows and orphans and for other purposes, approved July 25, 1866, shall be so construed as to place all pensioners whose right thereto occurred subsequently to the war of the Revolution, and prior to the 4th of March, 1861, on the same footing, as to rate of pension from and after the passage of said act, as those who have been pensioned under acts passed since said 4th day of March, 1861. The act of July 14, 1862, fixes the rate of pension for a captain in the Navy at \$30 a month for total disability, and the 2d section of said act fixes the pension of a widow at the same rate the officer would have been entitled to had he been totally disabled. The rate thus fixed has not been increased by subsequent legislation, and the provisions of the section above quoted have been re-enacted by the 18th section of act of March 3, 1873. Under these provisions the pension of Mrs. Shubrick was reduced from \$50 per month to \$30 per month.

The original pension was granted Mrs. Shubrick under a general law and not by special act, as she intimates in her petition. Her pension was thus liable to variation by subsequent legislation. The invaluable services of her family, and the age (73) and infirmities of the petitioner, present a strong claim upon the bounty of the Government; but the committee think this is not such a case as would justify them in recommending a special act, and ask that the committee be discharged from the further consideration of the matter.

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOHN H. COLEMAN
OF THE CITY OF BOSTON
IN TWO VOLUMES
VOL. II.

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VOL. II.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Jules L. Williams, for a pension, have had the same under consideration, and respectfully report :

That the sworn petition of petitioner shows he entered the service as a private in May, 1861, in the Fourth Regiment Michigan Volunteers, and was discharged early the next spring for disease of the lungs. Again, in August, 1862, he enlisted in the One Hundred and Thirty-seventh Pennsylvania Volunteers for nine months, and served out the term. Again, he enlisted in the service on one of the gun-boats of the Mississippi River squadron; served some time, and was then transferred as second lieutenant in the Forty-second Regiment United States Colored Infantry, and served there until July 31, 1866, when he was discharged with the regiment from the service. No proof is offered of disability arising in the service; no disease is specially referred to in the petition; but an explanation is offered for absence of all proof in the case on the ground of length of time since he left the service, and because he has lost track of all his old comrades. The petition does not require serious consideration. We therefore report adversely, and recommend its indefinite postponement.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Henry Cook for a pension, submit the following report:

The petitioner was a private in Company B, Sixth Regiment Wisconsin Volunteer Infantry. He was wounded in his left leg, a little above the ankle, on March 31, 1865, at the Southside Railroad, near Petersburg, and on the same day was injured, as he claims, in his side and breast, and was, in consequence, in several hospitals. His regiment was mustered out July 14, 1865, and he was discharged the service a few days previously, but the cause of his discharge is not stated. Five years after his discharge he applied for a pension, and his application, No. 159498, is still pending in the Pension-Office. We submit with this report a copy of a letter from the Commissioner of Pensions, from which it seems that the proofs are deemed sufficient to entitle him to a pension for the wound in the leg; but the injury cannot be of a very serious character, since the examining surgeon, who examined him in 1871, reports the degree of his disability at one-fourth only. Because the case is still pending in the Pension-Office, the committee ask to be discharged from the further consideration of the petition.

DEPARTMENT OF THE INTERIOR, PENSION-OFFICE,
Washington, D. C., March 17, 1874.

SIR: In compliance with your request, I have the honor to transmit herewith the invalid-pension claim No. 159498, of Henry Cook, which is still pending and awaiting a requirement, made December 23, 1872, for medical evidence of treatment in the service for the alleged wound of side, and of continuous disability since discharge.

This evidence is deemed essential, as the very full report of the Surgeon-General contains no record of this disability. The claim for pension on account of wound of foot is believed to be admissible upon the evidence on file.

Very respectfully,

JOS. LOCKEY,
Acting Commissioner.

Hon. D. D. PRATT,
Chairman of Committee on Pensions, United States Senate.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. PATTERSON submitted the following

R E P O R T:

The Committee on Pensions, to whom was referred the petition of Harriet J. Peabody, have had the same under consideration, and submit the following report :

Petition of Harriet J. Peabody and Frances M. Peabody, asking for pension, shows that in 1862 they were appointed nurses by the president of the Sanitary Commission in Saint Louis; were mustered into the service, and their names enrolled with the volunteer soldiers. That they were faithful in the discharge of their duties. They do not complain that they were not paid, or that they received injuries, or that their health has been impaired by their service as nurses, but now ask that some compensation may be made them in the way of pension, as they are in great poverty, and in declining years.

No doubt their claim is a just and meritorious one, but there are hundreds of others who were nurses whose claims are equally meritorious. Your committee think if relief is granted at all to this class of claimants it should be by a general law, and not by singling out special cases; and therefore report adversely upon the petition.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

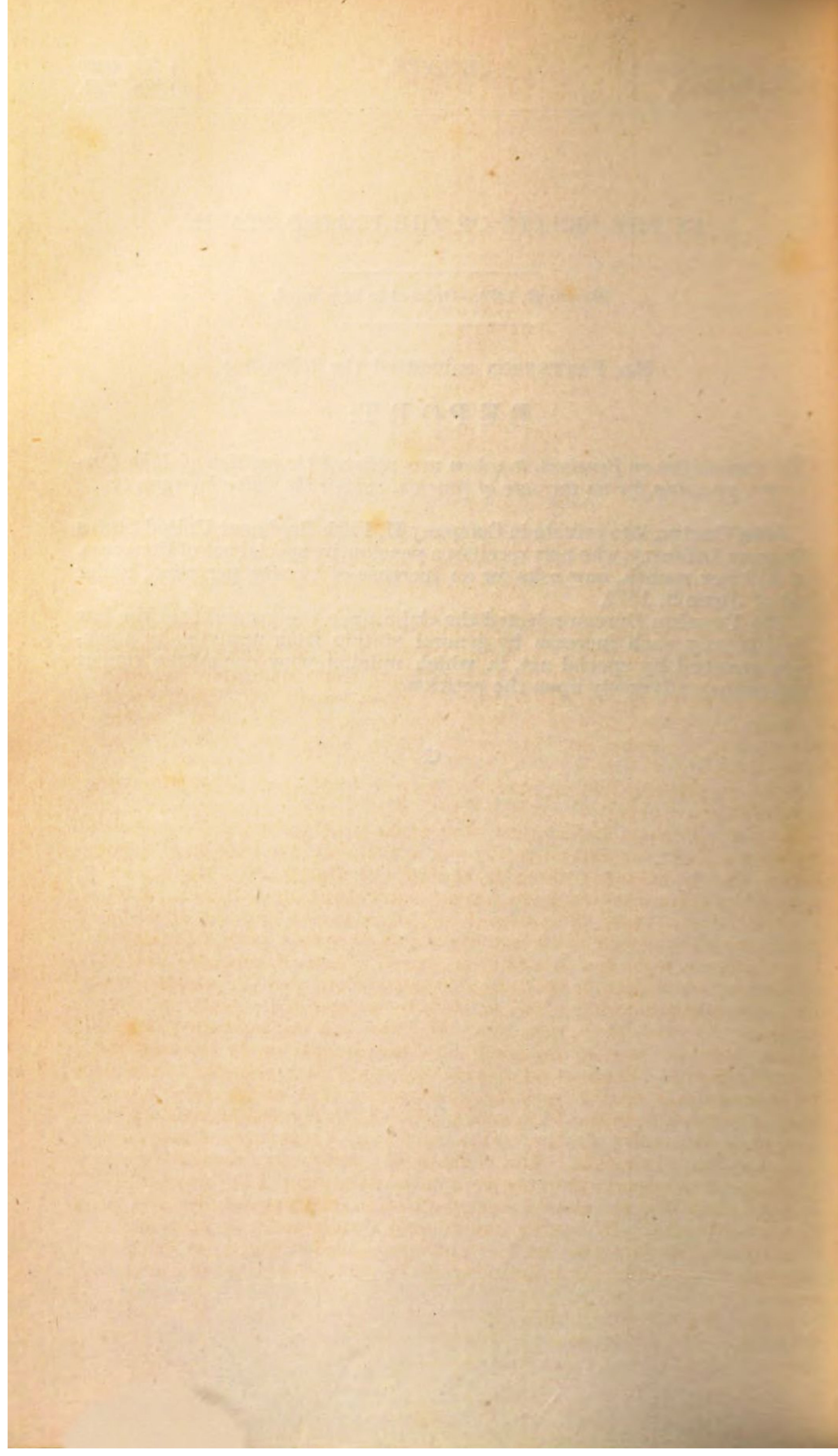
Mr. PATTERSON submitted the following

R E P O R T:

The Committee on Pensions, to whom was referred the petition of John Carter, praying for an increase of pension, submit the following report :

John Carter, late private in Company H, Fifth Regiment United States Regular Infantry, who now receives a pension, by special act of Congress, of \$15 per month, now asks for an increase of twenty per cent., under act of June 8, 1872.

The Pension Bureau rejected the claim upon the ground that the law forbids any such increase by general statute from applying to a pension granted by special act, in which opinion your committee concur and report adversely upon the petition.



IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 2094½.]

The Committee on Pensions, to whom was referred the bill (H. R. 2094½) granting an increase of pension to Mary C. Bell, submit the following report:

Mary C. Bell is the mother of David N. Bell, who was first a midshipman, then an ensign, and lastly a lieutenant in the United States Navy, and who died of chronic bronchitis at his home in Evansville, Ind., on March 25, 1870. His naval record is as follows:

September 23, 1861, he was appointed midshipman in the Navy; October 16, 1865, ordered to the Dacotah; December 1, 1866, promoted to ensign; May 27, 1867, detached from Powhatan; December 23, 1867, ordered to the De Soto; May 2, 1868, detached—sick; July, 1868, placed on the retired list; March 21, 1870, commissioned as lieutenant on the retired list, to date from March 26, 1869; March 25, 1870, died at Evansville.

He had performed three years' sea-service, and three years and four months' shore-duty.

Mary C. Bell, as his mother, and upon proof of dependence, was placed on the pension-roll, under the act of July 14, 1862, at \$10 per month, the pension beginning on the 26th of March, 1870, the day following her son's death, and she has been drawing that pension regularly since, \$120 per year. The present bill gives her an increase of \$5 per month, or the pension she would draw if her son had been a lieutenant in the service when his disability occurred. He died, as above stated, of chronic bronchitis or tubercular consumption, and the disease was contracted as far back as 1865 or 1866, by reason of frequent and long exposure to cold, snow, and rain. He was not commissioned a lieutenant until he was so far gone with the disease as to have retired from the Navy. There is no dispute about the fact that the origin of his disease was as far back as when young Bell was a midshipman. Had he retired from the Navy and applied for a pension he would have been entitled, under the law, to the pension of a midshipman only, and that was \$10 per month. The claim of his mother is a derivative one, and cannot be greater than her son's in the case put. The theory of the House bill is that she should receive a lieutenant's pension, because he died a lieutenant. Of course, had he died a commander or captain, his disease originating when he was a midshipman, her claim for the pension appertaining to those ranks, would be just as valid as the present one.

Under the act of 14th July, 1862, applicable to this case, the pension for total disability for passed midshipmen, midshipmen, captains and paymasters' clerks, second and third assistant engineers, master's mate, and

all warrant officers, was \$10 per month, while the pension for total disability of \$15 per month belonged only to first assistant engineers and pilots, lieutenants, surgeons, paymasters, and chief engineers, respectively, ranking with lieutenants by law. When any officer died subsequent to the 4th of March, 1861, of any wound received or disease contracted while in the service of the United States and in the line of duty, leaving neither widow nor legitimate child, but a mother, dependent upon him for support in whole or in part, the law allowed her to receive the same pension as such officer would have been entitled to had he been totally disabled, which pension was to commence from the death of the officer.

Now the Pension-Office found as a matter of fact, that David N. Bell, through whom Mrs. Bell claims, died of a disease originating when he was a midshipman, viz, in December, 1865. The records of the Navy Department show that fact. The Office further found, as a conclusion of law, that a commission bearing date subsequent to the time when the disability was incurred, could not affect the rate of pension; that if Mrs. Bell's son had survived he could have received only \$10 per month, and of course, she claiming only through him, was entitled to no more. Such has been and is the uniform ruling of the Pension-Office. We think it rests on principle and should not be disturbed. To make an exception in Mrs. Bell's case, because of the inadequacy of the pension as a means of support, weakens the rule and invites other exceptions, and finally the repeal of the rule itself. The rule should stand as one of universal application or be wholly repealed, otherwise Congress would be guilty of favoritism and pensions would be meted out by the rate of the applicant's needs.

That the construction of the Pension-Office is founded on reason a single illustration will prove. Suppose that Bell had been wounded and died while he was a midshipman; would she think of applying for a higher pension than \$10 per month? Clearly not. Well, the injury to her son's system, which produced his death, was received while he was a midshipman. His death relates back to December, 1865. As to her the case is the same as if he died then. The law does not say that the pension should be determined by the rank held *at the time of the death*; all of our legislation, on the contrary, fixes the pension by the rank held at the time of the death or disability incurred.

That the construction given to the law of 1862 is the correct one, and whether correct or not, that the action of the Pension-Office should control us in our action upon the present bill, is evident from the provision of the second section of the act of Congress of March 3, 1873, which was an amendment of the laws relating to pensions. That provision is as follows: "And every commissioned officer of the Army, Navy, or Marine Corps shall receive such, and only such, pensions as is herein provided for the rank he held at the time he received the injury or contracted the disease which resulted in the disability on account of which he may be entitled to a pension."

Now, though young Bell was a commissioned lieutenant at the time of his death, he was only a midshipman when he contracted the disease which resulted in his death, and the above-quoted rule is positive that the pension to be granted must relate to the latter period.

Therefore it is that the committee feel constrained in upholding the general rule on the subject—to break down which would be disastrous—to recommend that this bill be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 578.]

The Committee on Pensions, to whom was referred the bill (S. 578) for a pension to Elizabeth Locbrick, have had the same under consideration, and report:

That no papers, proofs, or explanations accompany the bill; there seems to be no grounds upon which to base an act for her benefit. The bill also provides for paying her out of the Treasury \$750 for money expended during the war. In this instance, also, no proofs or explanations are offered. In such case the committee feel that a favorable report cannot be made. The claimant might be able to present a good case for consideration, and, as we do not understand why explanations are not presented, we report adversely, but without prejudice to any just right or claim she may have, should she hereafter desire to renew the claim.

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REPORT

The following is a report of the progress of the work of the Committee on the subject of the proposed amendment to the Constitution of the State of New York, during the year 1890.

The Committee was organized on the 1st of January, 1890, and has since that time been engaged in a careful study of the subject. It has held several public hearings, and has received many suggestions from the public. It has also held several private hearings, and has received many suggestions from the members of the Legislature.

The Committee has found that the proposed amendment is a very important one, and that it is necessary to take prompt action upon it. It has therefore recommended that the amendment be adopted, and that the Constitution be amended accordingly.

The Committee has also found that there are many other matters of importance which should be considered by the Legislature. It has therefore recommended that the Legislature should take prompt action upon these matters also.

The Committee has the honor to recommend that the Legislature should take prompt action upon the proposed amendment to the Constitution, and upon the other matters recommended by the Committee.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1874.—Ordered to be printed.

Mr. BOG-Y submitted the following

R E P O R T :

[To accompany bill S. 205.]

The Committee on Indian Affairs, having had under consideration Senate bill 205, beg leave to report as follows :

On the 19th of June, 1858, treaties were made in this city with the two bands of Indians (Upper and Lower Sioux) mentioned in this bill. The 3d and 8th articles of said treaties are :

ARTICLE 3. It is also agreed that if the Senate shall authorize the land designated in article two of this agreement to be sold for the benefit of the said Minakantow and Wahpakoota bands, or shall prescribe an amount to be paid said bands for their interest in said tract, provision shall be made by which the chiefs and head-men of said bands may, in their discretion, in open council, authorize to be paid out of the proceeds of said tract such sum or sums as may be found necessary and proper, not exceeding seventy thousand dollars, to satisfy their just debts and obligations, and to provide goods to be taken by said chiefs and head-men to the said bands upon their return: *Provided, however,* That their said determination shall be approved by the superintendent of Indian affairs for the Northern Superintendency for the time being, and the said payments be authorized by the Secretary of the Interior.

ARTICLE 8. Such of the stipulations of former treaties as provided for the payment of particular sums of money to the said bands, or for the application or expenditure of specific amounts for particular objects or purposes, shall be, and hereby are, so amended and changed as to invest the Secretary of the Interior with discretionary power in regard to the manner and objects of the annual expenditure of all such sums or amounts which have accrued and are now due to said bands, together with the amount the said bands shall become annually entitled to under and by virtue of the provisions of this agreement: *Provided,* The said sums or amounts shall be expended for the benefit of said bands at such time or times, and in such manner, as the said Secretary shall deem best calculated to promote their interests, welfare, and advance in civilization. And it is further agreed that such change may be made in the stipulations of former treaties, which provide for the payment of particular sums for specified purposes, as to permit the chiefs and braves of said bands, or any of the subdivisions of said bands, with the sanction of the Secretary of the Interior, to authorize such payment or expenditures of their annuities, or any portion thereof, which are to become due hereafter, as may be deemed best for the general interests and welfare of the said bands or subdivisions thereof.

At the time these treaties were negotiated the exact amount of the debts of the Indians was not known, and the amounts named in said third article were fixed by the representatives of the respective bands upon estimates which, at that time, were thought to be sufficient to liquidate all just demands that might be brought against them.

In 1860, under instructions from the Office of Indian Affairs, the matter was submitted to the chiefs and head-men by the superintendent of

Indian affairs for the Northern Superintendency, who reported, under date of February 13, 1861, as follows :

That on the 3d December last he received the determination of the chiefs and head-men of the Lower Sioux band of Indians. They first stated that there should be paid Henry Bellam one thousand dollars for services rendered their tribe at sundry times. They further requested that a full examination should be made of all the claims presented against them by me, in order that those only should be paid which were justly due from them. They stated that they desired it to be understood that this should include all debts owing by them up to date of that council, and should the \$70,000 set apart by them in the treaty of 1858 not be sufficient to meet the amount which, after a full examination of the claims presented against them, should be found to be due, that the surplus under the said article of the treaty, over the amount therein set forth should be appropriated to pay the amount over \$70,000, and that the remaining portion should be paid to them as their annuities are paid, in four annual payments. The Indians stated that their object in making this further request in regard to the payment of their debts up to date was in order that they might feel that their past engagements were all liquidated, and that no claims existed against their tribe, and that it would enable them to realize the money on their furs they had then and would obtain from their winter hunting, for which they had already received outfits on credit. On receiving this request from the Indians, the traders who had given credit to the Indians since the date of the treaty of 1858 presented their books and transcripts of all accounts they had against the Indians up to the date of the council.

In view, therefore, of this request and understanding by the Indians, I would recommend that their request, given me as above stated, be granted. I have understood that the Upper Sioux, after learning the determination of the Lower bands to pay all their debts up to this date, have desired that the same course should be pursued in regard to their obligations, but I have no official notification of that fact; they only requested of me that the amount specified by the treaty should be set apart for the payment of their debts. It has been represented to me that the Upper Indians have refused to permit their winter furs to be credited on the outfits usually given for the purpose of enabling them to make the same. I mention this fact for the information of the Department, as the claims filed against the Upper Sioux are to the date of the 24th November last, and should any allowance be made, it is only under the discretionary clause of the treaty as the cases now stand.

The superintendent (Cullus) was also instructed to make a careful investigation of the debts and obligations of the Indians, which debts and obligations consisted of claims of sundry persons lawfully engaged in trade with the Indians, and to report the same, with the result of his investigation, to the Indian Office. The claims investigated and reported by the superintendent under these instructions were thoroughly examined in the Office of Indian Affairs, and there were found to be due from said Indians to their creditors the following sums, viz :

From the Upper bands prior to the treaty of 1858	\$93,737 68
Subsequent to the treaty of 1858	12,734 92
From the Lower bands prior to the treaty of 1858	102,290 92
Subsequent to the treaty of 1858	34,150 47

After such examination by the Indian Office, the matter was, under date of May 30, 1864, submitted to Hon. Caleb Smith, the then Secretary of the Interior, who directed the payment of the debts of said Indians to the extent named in the treaties, viz, \$70,000 on account of each band, said sum to be paid pro rata to the claimants in full satisfaction of their respective claims.

On the amounts due from both bands prior to the treaty of 1858, there was actually paid to claimants on account of the Upper band the sum of \$69,365.88, and on account of the Lower bands \$69,046.37, leaving a balance in the first case of \$24,371.80, and in the last of \$33,244.56, the residue of the \$70,000 in each case being used for defraying the expenses incident to the investigation of the claims. The claimants accepted the amounts paid them under protest, and afterwards made application for the difference between the amount so paid and that found

to be due them by the Office of Indian Affairs. The Lower bands having also requested payment of their debts incurred subsequently to the treaty of 1858, and prior to the council held with them in 1860, the matter was, under date of August 8, 1861, submitted to Secretary Smith, who, by letter of August 27, 1861, directed payment of the same. Accordingly, these debts, amounting to \$34,150.47, as above stated, were paid to the extent of \$25,954.35, leaving a balance of \$8,196.12. The Upper bands not having made any request for the payment of their debts subsequent to the treaty of 1858, no action was at that time taken in regard to them; provision, however, was made by the fourteenth article of the treaty of 1867 for the payment of the amount, \$24,371.80, due from them, but said article 14, with others, were stricken out by the Senate, and consequently no further action has been taken in the matter.

The proceeds of the sale of the lands mentioned in the second article of said treaties of 1858, amounted, for the Upper bands, to \$170,880; Lower bands, to \$96,000.

On the 13th of June, 1870, Hon. J. D. Cox, the then Secretary of the Interior, in a letter to Hon. James G. Blaine, Speaker of the House of Representatives, stated:

The treaties were negotiated in this city, and several of the creditors of the Indians were present. The different bands were desirous that all their obligations should be canceled, and the sum named in the 3d article of the treaties was based upon an estimate which, at that time, was thought to be sufficient to cover all demands that might be made against them; but upon an examination of the accounts, which, after examination and abatement by the Indian Department, were allowed, it was ascertained that after the payment of the amount provided by the treaty to satisfy the indebtedness of the Indians at the date of the treaties, a balance of \$57,616.35 remained against them. In 1862, the Indians, parties to the treaties, commenced hostilities against the citizens of the United States, known as the Sioux Indian massacre, which resulted in the abrogation of all treaties with the Sioux, their removal from the reservations in the State of Minnesota, and the confiscation of their annuities. There is also due by the Lower bands of Sioux Indians the sum of \$8,196.12, being a balance of claims against them arising subsequent to the treaty of 1858.

He further states the action of Mr. Secretary Smith in making payment to the extent named in the treaties, viz, \$140,000, and its acceptance by the creditors under protest, and application afterward made to the Department for the balance due, and that it appeared that Mr. Secretary Usher was inclined to direct the payment, but there was no appropriation within the control of the Department applicable thereto.

After stating the action of the Senate in regard to the treaty of 19th February, 1867, Secretary Cox further says:

The parties to whom the balances are due are now applying to be paid. An examination of the case satisfies me that the claims are probably just, and should be paid; but there are no funds at the disposal of this Department that could be applied to their payment. I therefore respectfully invite the attention of Congress to the propriety of making an appropriation to meet these claims, for which the sum of \$65,812.47 would be necessary, to enable the Secretary of the Interior to pay to the parties entitled thereto the balances due the creditors of the Upper and Lower bands of Sioux Indians, on account of supplies furnished said Indians prior to the 3d day of December, 1860.

In regard to the annuities, &c., due these Indians under treaty stipulations—abrogated and annulled by act of Congress of February 16, 1863—the papers in the case show: That at the time of the passage of said act there were annual installments due and to become due to the Upper bands, in the aggregate amounting to \$2,584,000, besides a permanent fund of \$3,000,000, on which interest at 5 per cent. was paid them annually, and the difference between the amount, \$170,880, to be paid for the lands ceded by the treaty of 1858, and the sum, say \$70,000, paid

therefrom on account of the debts, &c., amounting to about \$100,000, and to the Lower bands an aggregate amount of annual installments, due and to become due, of \$2,547,900, which said amounts would have been paid or be still due, in part, by the United States to said bands, had not their treaties been abrogated and their annuities forfeited by said act of February 16, 1863.

It further appears that there has been appropriated since the abrogation of the treaties for the payment of claims on account of depredations committed during the massacre the sum of \$1,170,374, and for the removal and to subsist and care for them at their new homes, in round numbers, \$671,000, making, in all that has been appropriated for and on account of these Sioux, between the abrogation of their treaties and the making of new treaties with them, about the sum of \$1,841,374, which would leave a balance in favor of, or what would be due to, the Indians of about \$3,790,526.

The preceding statement of the facts in the case shows that these bands were desirous that these claims should be paid, and took such action in regard to them as was required by the provisions of the treaties, and that the Department of the Interior has twice, upon a full examination, stated that the claims are probably just, and should be paid, and has invited the attention of Congress to the propriety of making an appropriation to enable the Secretary of the Interior to pay to the parties entitled thereto the balances due the creditors of these bands of Indians, for supplies furnished prior to the 3d day of December, 1860. The Committee on Indian Affairs, therefore, recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 174.]

The Committee on Public Lands, to whom was referred the bill (S. 174) for the relief of certain settlers upon homestead and pre-emption lands, have had the same under consideration, and submit the following report:

The bill provides that in all cases where settlers upon public lands, under the provisions of the pre-emption and homestead laws of the United States, shall have paid double minimum price by reason of their location within any designated railroad route, which route shall be so changed by the final location of the road as to exclude said lands from the limits within which double minimum price is to be charged, the excess above \$1.25 per acre shall be refunded to the person so paying the same or his legal representatives.

The bill also provides in its second section that settlers under the homestead laws who, by reason of such withdrawal and subsequent change, have received but 80 acres of land, shall be entitled to 80 acres additional, to be selected from any of the public lands open to settlement or pre-emption at the minimum price.

It will be perceived from this statement of the bill, that its provisions reach every railroad grant of public lands from the year 1850, when the first grant of the kind was made, for the construction of the Illinois Central Railroad.

As to the number and extent of the grants made to States and corporations for railroad purposes from the year 1850 down to the present time, information can be found in the Report of the Commissioner of the General Land-Office for 1873, on pages 281 to 288. The estimated quantity embraced in the limits of the several grants is, to the States, 54,667,041.97 acres; to corporations, Pacific Railroads, 159,364,766 acres; total, 214,031,807.97 acres.

The estimated quantity which the companies received from the grants is 187,260,300.05. The number of acres certified or patented under the grants is 34,620,827.86.

But it should be added that about six and a half million acres granted for railroad and wagon-road purposes should be deducted by reason of lands having reverted and lapsed, and because of forfeitures declared by Congress.

Now, upon all these grants, the bill under consideration operates when the line of the road upon final location has been so far changed as to throw it beyond the limits of the grant. As, for illustration, suppose

the grant to have been of the alternate odd-numbered sections on each side of the contemplated road, the width of five miles. If the company for the best of reasons see fit to change the final location of the road, in a manner to cheapen its cost, or to benefit the public, or for both causes, so as to throw it beyond this tier of sections granted, then the effect of this bill will be to compel the United States to refund \$1.25 per acre to every pre-emptor or purchaser in times past who has paid at the rate of \$2.50 per acre for the reserved or Government lands. In other words, the Government by this step will have received no equivalent for the grant to the company in the increased price of the reserved lands as to all such as by the change are thrown beyond the original limits.

Besides, the Government will have lost the commissions paid to the officers of the land-offices for sales at \$2.50 per acre. The commissions, having been lawfully paid, could not of course be recovered back, and these amounts would be lost to the United States. So, too, with the five per cent. proceeds of the sales accounted for to the States under the provisions of the several acts admitting them as States into the Union.

It is impossible, without a great deal of inquiry, to ascertain how sweeping in its effects this bill would be. It involves an inquiry into the change in the location of every railroad which has received a subsidy from the United States. The provision is absolute that the excess paid above \$1.25 per acre shall be in all cases refunded, either to the purchaser or his legal representatives without reference to whether the purchaser was injured or not, or assented to the change or was instrumental in procuring it. Thus, for illustration, suppose the line of the road upon final location is laid just outside the limit of the land-grant. It is obvious in this case that one-half of the purchasers of the reserved lands on the side to which the line has been removed, are just as near the road as they were at the first location. Indeed, as to the entire tier of sections on the one side of the road, the purchasers as a body are as near the road as they were before the change was made, with this difference, that those before nearest the road are now farthest from it, and *vice versa*.

Now, it is to be observed that the Government has not made this change. On the other hand, it has been made by the company; and if it be said the company could not have made it without the authority of Congress, the reply is that the power to change the final location was in the law making the grant, which everybody could read and must be presumed to know. Hence, when the reserve lands under any such grant have been taken up by settlers under pre-emption laws, or purchased, it has been with full notice, on their part, of the power of the company, under the law, to change the location of its road. They bought the lands with the risk of a change of location, which would defeat, in whole or in part, their motive in selecting the lands pre-empted. The United States ought not to be chargeable with this defeat of their expectations. They made haste to take up this land, running the risk of any change in the line of the road. They have got what they bought, the land, and the United States entered into no covenant to insure the final establishment of the road on the line indicated upon the map at the time of the purchase.

They received no benefit from the change, and should be chargeable with no loss.

The line of the road may have been changed but a few rods, yet all the lands thrown by the change outside the original limits would be affected by this bill, and their owners entitled to make reclamation, although it were susceptible of demonstration that the lands were not depreciated in value in consequence of the change.

Besides, the information of the committee is that the General Land-Office has never permitted a company which has received a subsidy in lands to so far change the line of its road as to very materially affect the interests of the purchasers of the reserve lands. Nor would it be the policy of the company to do so, since they would share in the loss to the same extent as the purchasers and pre-emptors, the company's lands lying within the same limit.

The committee append hereto the letter of the Commissioner of the General Land-Office, to whom this bill was sent for his opinion, which sets forth much more fully and forcibly the reasons which exist why this bill should not receive favorable consideration, and they recommend that the bill be indefinitely postponed.

DEPARTMENT OF THE INTERIOR, GENERAL LAND-OFFICE,
Washington, D. C., March 26, 1874.

SIR: I have considered the bill (S. 174) for the relief of certain settlers upon homestead and pre-emption lands, referred by you for my opinion.

The printed bill provides for refunding to pre-emptors the sum of \$1.25 per acre where the lands purchased have been paid for at the double minimum price, and afterward, by a change in the line of a railroad, have been thrown outside the limits within which such price would have attached had the road been first located upon the line finally adopted.

It also provides for an allowance of eighty acres additional to homestead settlers who have been restricted to that amount, in the same contingency.

Proposed amendments, interlined, extend these provisions to cases where lands are finally restored, by reason of the failure of the companies to construct the roads in aid of which a grant has been made.

The system of aid to railroads commenced in 1850, and has continued, under precisely similar conditions, since that date. In all cases the Government sections have been raised in price immediately upon the location of the route of the roads, and in case of a subsequent variation, transactions and entries already perfected have been considered closed, and have remained undisturbed.

Many of the grants have been long since adjusted, the lands of settlers patented, and the whole matter of title finally passed upon without serious complaint from any source. Indeed, it is only in exceptional and isolated cases that parties have asked to have any portion of the purchase-money refunded for the reasons named in the bill; and I am not aware of any special hardship that has resulted from a refusal to refund.

In the numerous grants that have been made it has happened that the lines of the proposed routes have been changed in many instances, and to open all these cases would be found to involve nearly or quite every road in the country upon some part of its line.

In the older States, and in numerous cases in the newer, the original settlers would not be found still in possession; and a horde of attorneys and speculators would at once search out and buy for a mere nominal sum the claims accruing, and obtain for very imperfect consideration money lawfully paid into the Treasury, and for which the parties paying it have been long since fully satisfied.

The expense to the Government would involve millions of dollars, without taking into the account the labor, and the clerical force necessary to adjust the claims that would come before this Department and that of the Treasury. In this Office alone, to properly perform the work, would require the services of at least five clerks for an indefinite period.

The equities of these claims are not so great, upon a careful consideration, as would at first appear.

In the case of a change of line, varying from a few rods, it may be, to a very few miles—for no wide departure from a line once definitely fixed is allowed by the Department—the fact is the road is generally built; and although it may be at a little farther distance from the settler, it is yet in his immediate neighborhood, and his farm partakes of the increased value incident to its location. He has hastened to make his choice—without waiting for certainty—taking his chances respecting the permanency of the line, and will probably be found in nearly every case to have received substantial benefit, worth much more to him than the cost of the land.

In the mean time the Government has paid to the district officers the commissions attaching to the increased price, has allowed to the State five per centum of the net proceeds, and has been to all the expense of making the adjustment of its accounts and patenting the entry on that basis; and these costs can never be refunded to the

4 SETTLERS UPON HOMESTEAD AND PRE-EMPTION LANDS.

Government, so that in case of repayment the United States, instead of receiving compensation for the land, would lose from the minimum price to the amount of all this additional cost of sale.

It is probably true that had the settler known that the line would be changed he would have settled nearer the road. So, too, had the Government known that fact it would not have incurred the additional expense of sale. Which is best entitled to the benefits of the risk, the settler who has succeeded in securing a valuable tract of land, worth all it cost and more, or the Government, that has granted away a large body of land and assumed all the expense of adjusting its grant for the express purpose which has been accomplished, of making his home accessible and adding to its value?

In the matter of a failure to build the road, and the consequent restoration of lands, it is true that a large equity vests in the settler.

But it must be borne in mind that the breach of faith is not the act of the Government, nor is the investment of the settler made on the promise of the Government, but of the State or corporation which has assumed the construction of the road and secured the aid of the grant. The settler becomes the citizen of such State and the patron of such corporation, and it is to his individual interest to assist in the performance of the work. The Government does not undertake it, nor expect to suffer loss if the execution fails.

Yet we find in many cases that the proposal of such an enterprise draws to a neighborhood in advance of definite location such a number of settlers as to absorb the lands intended to be granted, and the companies failing in their expected revenues from that source, and not able to proceed without them, abandon the enterprise and incur a forfeiture.

Should the Government in such case refund the amount received from the settlers, who exercised a free choice in taking the lands, knowing the legal price and being in a far better position than the Government to ascertain the real probabilities as to whether or not the road would be built?

One may have an equitable claim upon another, who, by false inducement, has led him to an actual loss; but in this case I do not understand that the Government has induced the settler by any pledge of its faith, nor is the thing sold worth less than the price paid. On the contrary, the lands thus taken have been in most cases enhanced in value by the proposal to build a road through them, and their consequent settlement and improvement to a greater extent than those not thus situated; and it will hardly be said that they are not, even after the road has failed to reach them, worth, exclusive of improvements, much more than the price paid to the Government.

If the particular roads have in many cases failed of construction, there is not a State in which a forfeiture has occurred that is not so traversed by lines of road assisted by the Government as to add immensely to the value of her real estate. There are few lands thus settled upon that would not be sought, were they allowed to be taken at private entry, even at the double minimum price; and for the protection of settlers, the policy of refusing to offer the lands has become the almost inflexible rule of the Government. Only lands chiefly valuable for other purposes than settlement are proclaimed.

Under these circumstances I am not in favor of cheapening these lands, raised by fortuitous circumstances to the double minimum, while any prospect of the construction of the roads is possible, nor would I recommend the policy of refunding to every man a portion of his purchase-money who has, understandingly, bought the property of the Government at its proclaimed market-value, because after-events have failed to make his investment as lucrative as he hoped it would prove, no matter how reasonable may have been his expectation, so long as the Government is not responsible for his supposed injury.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

Hon. D. D. PRATT,
Committee on Public Lands, United States Senate.

IN THE SENATE OF THE UNITED STATES.

• MARCH 30, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 496.]

The Committee on Claims, to whom was recommitted the memorial of T. T. Garrard and others, proprietors and lessees of the salt-works near Manchester, in the State of Kentucky, praying compensation for the destruction of their salt and injuries committed upon their works by the troops of the United States in the year 1862, submit the following report:

Upon the reconsideration of this case, the committee find that, in case No. 3, of White, Horton & Garrard, Daniel Garrard, the third member of the firm, is dead, and had, in his life-time, an interest of one-fourth only in the property of the firm, instead of one-third, as was assumed in the report of the committee submitted to the Senate, February 17, 1874. They therefore amend that report in its concluding paragraph by the subtraction of \$512.50 from the \$2,050 allowed said firm, instead of one-third, which leaves the sum due the survivors of the firm \$1,537.50, instead of \$1,366.67, and they herewith report an amendment of the bill accordingly, and recommend its passage as amended.

IN THE SENATE OF THE UNITED STATES

REPORT

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
MAY 17, 1871

Under the recommendation of this committee, the Commission of the Land Office, in its report, has the honor to state that the same has been prepared in accordance with the instructions of the Senate, and that the same is now submitted to the Senate for its consideration. The Commission of the Land Office, in its report, has the honor to state that the same has been prepared in accordance with the instructions of the Senate, and that the same is now submitted to the Senate for its consideration.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 637.]

The Committee on Public Lands, to whom was referred the memorial of the governors of Ohio, Indiana, and Illinois, relating to the two-per-cent. fund arising from sales of public lands in said States, submit the following report:

The memorialists claim that the General Government is indebted to their respective States in an amount equal to two per cent. of the proceeds of sales of public lands within their respective States. For the past twenty years the governors of these States and their legislatures have called the attention of the executive branch of the General Government, as well as the legislative, to these claims, and have pressed them for adjudication and payment persistently up to the present time. The basis of these claims is as follows: In 1802 Congress, being desirous to open for settlement and dispose of the public domain lying within the Northwest Territory, passed an enabling act, under which Ohio was admitted into the Union, section 3 of which was as follows:

3. That the following propositions be and the same are, offered to the convention of the eastern State of said Territory, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States. * * * *

Third. That one-twentieth part of the net proceeds of the lands lying within the said State sold by Congress from and after the 30th day of June next, after deducting all expenses incident to the same, shall be applied to the laying-out and making public roads leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said State, and through the same, such roads to be laid out under the authority of Congress, with the consent of the several States through which the road shall pass: *Provided always*, That the three foregoing propositions herein offered are on the condition that the convention of the said State shall provide, by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by Congress, from and after the 30th day of June next, shall be and remain exempt from any tax laid by order or under authority of the State, whether by State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale.

Ohio accepted irrevocably the proposition thus tendered, and has faithfully discharged and performed the obligations imposed upon her by the terms of this compact. Fourteen years afterward, to wit, in 1816, Congress passed an enabling act under which the State of Indiana was admitted into the Union. That portion of it which relates to the subject-matter in hand is as follows:

3. That the following propositions be, and the same are hereby, offered to the convention of the said Territory of Indiana, when formed, for their free acceptance or re-

jection, which, if accepted by the convention, shall be obligatory upon the United States.

Third. That five per cent. of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the 1st day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said State under the direction of the legislature thereof, and two-fifths to the making of a road leading to the said State under the direction of Congress.

And provided always, That the five foregoing provisions, herein offered, are on the conditions that the convention of the said State shall provide by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the 1st day of December next, shall be and remain exempt from any tax, laid by order or under any authority of the State, whether by State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale.

Two years later, in 1818, Congress passed an enabling act under which Illinois was admitted into the Union. That portion of said enabling act which relates to this subject is as follows :

That five per cent. of the net proceeds of the lands lying within such State, and which shall be sold by Congress from and after the 1st day of January, 1819, after deducting all expenses incident to the same, shall be reserved for the purposes following, namely : two-fifths to be disbursed, under the direction of Congress, in making roads leading to the State; the residue to be appropriated by the legislature of the State for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university.

Two years later, in 1820, Missouri was admitted into the Union upon the following conditions:

That five per cent. of the net proceeds of the sales of lands lying within the said Territory or State, and which shall be sold by Congress from and after the first day of January next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the State, under the direction of the legislature thereof, and the other two-fifths in defraying, under the direction of Congress, the expenses to be incurred in the making of a road or roads, canal or canals, leading to the said State.

All of these States accepted and ratified the terms offered in the various enabling acts referred to, and have faithfully performed each and every obligation imposed thereby upon them respectively. As regards the claims now presented these various compacts between the General Government and these States should be regarded as an entirety, and not as separate and independent contracts with each of the States. In 1802 the application of steam as a motive-power on water was practically unknown. Hence Congress supposed it to be of great importance to the whole country to construct a national public highway, leading from the tide-water of the Atlantic Ocean to the Mississippi River. In order to accomplish this then great work, the United States submitted to the States of Ohio, Indiana, Illinois, and Missouri the propositions contained in the enabling acts referred to for a two-fold purpose : first, to induce settlement in the then wilderness of the Northwest Territory, by making an eligible thoroughfare from the tide-water of the Atlantic through that country, in order to bring this vast domain belonging to the General Government into market ; secondly, to secure a small proportion of the cost of constructing the road out of the two per cent. of the proceeds of sales of public lands lying within their respective limits.

Upon an examination of these various enabling acts as but one proposition, what does it amount to, and what are the legal obligations imposed upon the General Government from a fair interpretation of it ? In plain language, it is simply this : That the United States agreed to

construct a public highway leading from the navigable waters emptying into the Atlantic to and through the State of Ohio, to and through the State of Indiana, and to and through the State of Illinois. The States, on the other hand, agreed that in consideration of the building of this road according to the terms of the compact, they would not tax any of the lands sold by the United States within their respective limits for the term of five years from the date of sale; and further, that the United States might reserve five per cent. of the proceeds arising from the sales of public lands within their respective limits, and might appropriate two-fifths of the five per cent. toward the construction of the proposed road, paying the remaining three-fifths of the five per cent. into the treasuries of the respective States, to be appropriated by them in the manner agreed upon in the original compacts under which they were admitted into the Union.

This is, in substance, the contract between the States of Ohio, Indiana, and Illinois, and the United States. In 1806, under the authority of Congress, the General Government commenced the construction of the public road then known as the Cumberland Road, but subsequently known as the National Road. Money for the work was appropriated out of the two per cent. fund arising from the sales in the State of Ohio. Various appropriations were made, from time to time, to construct the road between Cumberland and the Ohio River, until the aggregate amount appropriated and expended on that portion of the road lying east of the Ohio River amounted to \$2,812,034.21. In the State of Ohio there has been expended by the General Government, toward the construction of this National Road, \$2,077,631.06; in Indiana, \$2,178,289.50; in Illinois, \$742,445.30; making a sum total expended upon this road by the General Government of \$6,760,400.07. This expenditure was made between the years 1806 and 1838. Since 1838 no appropriations have been made for that road, and no work has been done upon it. If commencing a public highway at Cumberland, in the State of Maryland, and completing it to the Ohio River, partially constructing it through the State of Ohio, and leaving it in an unfinished and worthless condition in the States of Indiana and Illinois, is a full and fair compliance on the part of the United States, under the original compact made with those States at their entry into the Union, then these States have no legal and valid claim against the General Government for this two per cent. fund. But if the United States has not complied with its contract with these States, and has not constructed the road which was agreed upon between the parties, leading from the navigable waters of the Atlantic to and through the State of Ohio and to and through the States of Indiana and Illinois to the Mississippi River, then the United States has not been discharged from its obligations arising under these contracts, and is answerable for the claims now made against it by these States. It has been urged by some that the United States only undertook to expend two per cent. of the proceeds of the sales of public lands in these States in building such a road as the sum thus derived would construct. This is equivalent to saying that the people of these three States, who made the contract, were lacking in ordinary intelligence. The two-per-cent. fund, arising from the sale of all the lands within these States, and estimating permanent reservations at \$1.25 per acre, amounted to no more than \$1,300,000, while the United States expended \$2,812,034.21 on that portion of the Cumberland or National Road lying east of the Ohio River, and nearly \$5,000,000 upon the road west of the Ohio River. The two per cent. arising from the sale of public lands was but a trivial consideration in the estimation of the Government,

when compared to the relinquishment by these States of the right to tax any lands sold by the Government for a period of five years from the date of sale. This was the real consideration that induced the United States to undertake the building of a great national highway, leading from the Atlantic to the Mississippi River. It was a great inducement to the pioneer and immigrant to be able to purchase land that should under no circumstances be taxed for the period of five years. It is reliably estimated that the relinquishment of this prerogative by these States has deprived their treasuries of at least five millions of dollars. Hence it may be truly said that these States have contributed up to this time for the use of the General Government, without interest, the two per cent. arising from the sales of public lands within their respective limits, but have also suffered a loss by virtue of these compacts to the amount of five million dollars, by parting with the right of taxation. Had the road never been built beyond the Ohio River, would anybody have dreamed that the United States, by reason thereof, was discharged from its obligation to these States? Who would have ever thought of charging these States with any portion of such an expenditure? During all the years of this expenditure on the Cumberland or National Road by the General Government, not a single farthing was ever charged in any Executive Department against any of these States on account of such an expenditure. Undoubtedly, the United States entered into these compacts in good faith, and intended to construct a great national highway from the navigable waters leading into the Atlantic to the Mississippi River. As an evidence of this we cite the fact that for 32 years from the year 1806, the Government continued the prosecution of this great work, and undoubtedly would have completed it ere this, in accordance with the fair understanding of all the parties concerned, if the condition of things had remained the same to this day as they were at the time of entering into this contract. By the year 1838 Congress saw, and everybody saw, that a great national wagon-road would be of no great public utility, because steam had been applied as a motive-power upon all our rivers, and had been successfully applied to railroads, and at that date several railroads were in successful operation. The application of steam, then, as a motive-power upon railroads, was no longer an experiment, and the United States perceived that it would be a wasteful expenditure of the public money to build this road according to the original undertaking. In 1838, Colonel Totten, of the United States Engineers, under authority of Congress, made an estimate of the amount of money which would be required to complete this road. According to Colonel Totten's report, made to Congress, it would require, to complete the road in Ohio, \$680,166; to complete it in Indiana, \$3,144,250; to complete it in Illinois, \$2,448,838; to complete it in Missouri, \$1,764,790; making a total cost, in addition to the \$6,760,400.70 already expended, of \$7,896,790.

At that time, had the completion of the road been a *desideratum* of any considerable importance in the estimation of these States, they might have insisted upon a specific performance of the contract and the completion of the road. Legally the United States would have been bound to have acquiesced in a demand to complete the road at an additional expense, according to its own engineer, of nearly \$8,000,000. In consideration of the fact that the construction of this road had ceased to be a matter of national importance, for the reason that steam on land and water had rendered such a road unnecessary, the United States determined to abandon the building of the road, and from that day to this has never

expended a dollar upon it, but has donated such portions of it as lay within the limits of the respective States to those States without charge or the expectation of any reward. Maryland has had the benefit, without cost to her, of that portion of the road completed within her borders. Pennsylvania has had the benefit of the expenditure of nearly two millions of dollars for the road lying within its limits, and now owns the road without cost to her. So of Virginia, so of the other States, Ohio, Indiana, and Illinois; but only a portion of the road was of any practical value to the State of Ohio, that lying between the Ohio River and Springfield, and it was of no practical value to the States of Indiana and Illinois. Instead of demanding the completion of this road by the General Government, at an expense of nearly \$8,000,000, these States—Ohio, Indiana, and Illinois—waive that and merely ask that the money used by the General Government, which it received as a trustee from these States under the original compacts, shall be, without interest, returned to them. The disposition of this matter in this manner will cost the United States but \$1,287,088.82, while to complete the road would have cost the Government about \$8,000,000 additional. Hence by abandoning the road and refunding to the States the two per cent. which they now claim, the Government is a clear gainer in a sum exceeding six million dollars. We have had legislative construction of the compacts between the General Government and these States heretofore. When the question of the construction or abandonment of this road arose in Congress it was asked what was the obligation imposed upon the Government of the United States by the compacts with the States of Ohio, Indiana, Illinois, and Missouri in relation to this two-per-cent. fund and the construction of this road. The Senate Committee on Roads and Canals, in 1840, in a report on this subject, state the question as follows:

Is the General Government bound in good faith, under the compacts with Ohio, Indiana, Illinois, and Missouri, to complete this work?

And, after an elaborate discussion, answered it as follows:

The committee, therefore, maintain that the Government was bound by the compacts to finish the work whether the two per cent. of the net proceeds of the sales of public lands were sufficient to complete it on her scale or not. (See Senate Report 160, 26th Congress, volume 4.)

The same construction was given to these compacts by the House Committee on Roads and Canals in 1846. (See House Report No. 24, volume 2.) We extract a portion of that report as demonstrating the view of that committee at that time on the subject of the obligation on the part of the United States to these States under the respective compacts:

The four States, (Ohio, Indiana, Illinois, and Missouri,) by binding themselves not to tax the public lands during a period of five years from the date of their sale to individuals, gave a most valuable consideration for the expenditures Congress is pledged to make. The principal source of revenue belonging to new States is the land-tax, and to be deprived of the ability to levy it to any considerable extent, is to seriously augment the embarrassments of the Treasury and the burdens of the people. And besides this, the United States is, and during the last forty-five years has been, the principal land-owner in three of the four States; and if its land had been taxed at the rate that other lands have been taxed, money enough would have been raised to have built a road from Cumberland to Nebraska. But, unlike other property-owners, while its property is daily being benefited by the labor, money, and improvements of the States and of the citizens, it is not compelled to pay its *pro rata* share of taxation. Does not this fact constitute an important claim upon the kindest and most liberal consideration of Congress?

Is it to be supposed for a moment that the States ever would have consented for the General Government to have retained and expended this fund upon a work which she might lay out and project upon a scale so extensive, or so expensive, as to merge

the whole funds, and leave a work that would exhaust in its completion a greater sum than the States would have felt justified in expending on any single work? For let it be remembered that the States had no say in the direction, sale, or execution of the work. It would have been folly in the States to have consented to such compacts with such an understanding; but it seems to the committee that such is not the true construction of the compacts. This view is strengthened by the facts that the lands subject to the operation of the compacts in the three States of Ohio, Indiana, and Illinois, alone, were estimated at one hundred and twenty millions of acres; the tax on this quantity of land, which was relinquished by the States, for the five years, would have amounted to at least five millions of dollars.

In 1858 Mr. Tappan, for the Judiciary Committee of the House of Representatives, made a report in relation to Missouri for her two-per-cent. fund. We extract a portion of that report to show the construction placed upon those compacts by the Judiciary Committee of the House of Representatives:

That part of the fund which it is contemplated by this article shall be applied by the State to improving its internal communications has been duly paid over by the Government of the United States. But the two per cent. received by the United States in trust, to be applied to communications leading to the State, has not been so applied. The trust has not, therefore, been duly discharged, and the money which the article recognizes as the property of the State, and to be applied for its benefit, should be accounted for to the State by the Government of the United States. The two-per-cent. fund in question belonged to the State, and the interest of the Federal Government was but that of a trustee, and the sole reason for the arrangement was, that as the Government of the United States had authority outside of the limits of the State, which the State did not possess, it could apply that portion of the fund intended to facilitate communication to and from the State and promote its external commerce better than the State itself could do. If the terms of the article itself admitted of any question that this was the nature of the interest of the State in this fund, the original of this provision, which is found in the corresponding article of the 7th section of the act of 30th of April, 1802, 2 Stat., p. 175, entitled "An act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State government," &c., in which it is expressly admitted that the five per cent. was given to the State as the consideration for the exemption of the lands of the United States within its limits from taxation, would be conclusive on the point. This was certainly a small consideration for the release by the State of a right to tax forty million acres of Government lands within its limits, and there is, therefore, the more reason why it should be certainly and fully paid according to the agreement between the parties, or accounted for to the State, if the purpose to which it was to be devoted under the agreement between the parties has been abandoned. That purpose was the construction of a road (the Cumberland road was intended) to the boundary of Missouri, a purpose which has long since been abandoned, and the Government should therefore deal with Missouri as it has dealt with Mississippi and Alabama under similar circumstances—direct the two per cent. fund, which was reserved for the purpose thus abandoned, to be paid to the State.

We call attention to the fact that, under the terms expressed in the Ohio enabling act, which should be regarded as the first section of a continuous contract, extending to the States of Ohio, Indiana, Illinois, and Missouri, the United States agreed to construct a road or roads from the navigable waters leading to the Atlantic Ocean to the Mississippi River. If this means anything, it means from the tide-water of the Atlantic to and through these States. It is well known that Cumberland is the initial point of this road, and that Cumberland is 175 miles from Baltimore, and about 200 miles from tide-water on the Potomac. Here, then, the General Government has failed to comply with its contract; and had the Government complied in all other respects with the terms of its compact, by completing this road through to the Mississippi River, and had made a tender of it to the States for their acceptance, they could have declined it, for the reason that the General Government had not complied with the terms of the compact, and could have insisted that the Government should extend the road eastward until it reached tide-water. If Cumberland can be claimed to be on the navigable waters

leading to the Atlantic, then any other point *east* of the Ohio River would have answered just as well.

In view of all the facts and all the lights that this committee have been able to obtain, they cannot escape the conclusion that the claims of these States to this two-per-cent. fund is a legal and valid one, and binding upon the United States. They cannot conceive how, under any principle of law, the United States is entitled to a set-off against this demand by reason of any expenditure on the National or Cumberland Road.

It appears to your committee that, in an equitable point of view, the United States is equally bound in good faith to refund this money to these States. Upon this point we submit the following facts: In 1817 Congress passed an enabling act to admit Mississippi into the Union. A part of the fifth section of that act is as follows:

That five per cent. of the net proceeds of the lands lying within said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said State under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State under the direction of Congress.

In 1819, Congress passed an enabling act to admit Alabama into the Union, the sixth section of which provides as follows:

That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within the State, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress.

We have already quoted that portion of the enabling act under which Missouri was admitted into the Union, relating to this subject.

In the cases of Alabama and Mississippi, it will be seen that the United States entered into a compact with them to build a road or roads leading to these States, and toward that object two-fifths of the five per cent. arising from the sales of public lands within these States was to be reserved by the United States and to be applied toward that purpose. It is admitted that the United States did not construct any road leading to either of these States, and the United States has admitted its obligation to refund to these States the amount of the two-per-cent. fund, as is evidenced by the acts passed in 1855 and 1859 under which these States have been paid the full amount of the two-per-cent. fund due them under the original compact with the United States, and amounting to the sum of \$736,740.99. Suppose that the United States had undertaken the construction of a road from Richmond, leading to Alabama and Mississippi, and after completing 100 miles of the road had abandoned it, could anybody reasonably claim that the United States had so far complied with its contract as to be acquit of any further obligation to these States on that account? Could the United States have rightfully insisted that the amount thus expended could be set off against the claims of these States for the two-per-cent. fund? We cannot conceive how an incomplete and worthless road is superior to no road at all, or by what right the United States brings in a set-off against the claims of Ohio, Indiana, and Illinois by reason of an expenditure on the Cumberland or National Road, always incomplete and long since abandoned. Missouri never had a superior claim upon the United States for the refunding of this two per cent. to that of the States of Illinois, Indiana, and Ohio, yet Congress in construing the obligations and liabilities of the

United States to the State of Missouri as well as to the States of Alabama and Mississippi, directed, by the act of Congress passed in 1859, that the two-per-cent. fund arising from the sale of public lands in the State of Missouri should be refunded to her, and it has since been paid, amounting to the sum of \$403,049.54. Louisiana and Arkansas were admitted into the Union under a compact that the whole of the five per cent. arising from the sale of public lands within their limits should be paid into their respective treasuries, without relinquishment by the State of the right to tax lands sold by the United States. Since 1836, all landed States admitted into the Union have been admitted under compacts that they should receive five per cent. of the proceeds of the sales of public lands within their respective limits, without relinquishing the right of taxation upon lands sold.

We have said that the United States paid the States of Alabama and Mississippi, under the legislation of 1855 and 1857; and here we desire to call special attention to the act of March 3, 1857, by virtue of which Mississippi received her two-per-cent. fund.

Mr. Brown, of Mississippi, introduced the bill into the Senate, and moved its reference to the Committee on Public Lands, which was so ordered. The bill at that time contained but one section, as follows, to wit:

AN ACT to settle certain accounts between the United States and the State of Mississippi, and other States.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Commissioner of the General Land-Office be, and he is hereby, required to state an account between the United States and the State of Mississippi, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, on account of the public lands in said State, and upon the same principles of allowance and settlement as prescribed in the "Act to settle certain accounts between the United States and the State of Alabama," approved the second of March, eighteen hundred and fifty-five; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw and Choctaw Indians within the limits of Mississippi, and allow and pay to the said State five per centum thereon, as in case of other sales, estimating the lands at the value of one dollar and twenty-five cents per acre.

While in committee, the bill was amended by adding the following section:

SEC. 2. *And be it further enacted,* That the said Commissioner shall also state an account between the United States and each of the other States upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre.

Thus amended and perfected, it was unanimously agreed to, and its passage unanimously recommended.

Mr. Stuart, of Michigan, was the member of the committee who reported the bill to the Senate; and on the day of its passage by the Senate, Mr. Brown submitted the following remarks in explanation of the bill and of the action of the committee:

Mr. BROWN. The Committee on Public Lands, on Thursday last, reported back the bill introduced by me (S. No. 4) to settle certain accounts between the United States and the State of Mississippi. The principle on which it is based has already been settled by the action of Congress. It applies to my State, and the amendment of the committee embraces like interests in other States. I ask the indulgence of the Senate to take up and pass it now, so that it may have a fair opportunity of getting through the House of Representatives at the present session of Congress. If it embraced any new principle I should not ask to have it taken up now.

The motion was agreed to; and the bill, as amended by the committee,

passed. Then, on motion of Mr. Stuart, the title was amended so as to read :

A bill to settle certain accounts between the United States and the State of Mississippi, and other States.

And in this form the bill was enacted a law.

Under the first section of this act Mississippi has been allowed and paid \$——.

The second section provided for the stating of an account between the United States and each of the other States, upon the same principles of *allowance*—not set-off—as were prescribed for the settlement of the accounts of Alabama and Mississippi.

In determining the true intent of the second section of the Mississippi act, it should be read and construed in connection with the Alabama act and the first section of the Mississippi act.

For convenient reference we here insert the full text of the Alabama act :

AN ACT to settle certain accounts between the United States and the State of Alabama.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the Commissioner of the General Land-Office be, and he is hereby, required to state an account between the United States and the State of Alabama, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, under the sixth section of the act of March second, eighteen hundred and nineteen, for the admission of Alabama into the Union, and that he be required to include in said account the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to the said State five per centum thereon, as in case of other sales.

Approved March 2, 1855.

It will be observed that no provision is made for bringing forward a set-off against the claim of Alabama, while the Commissioner of the General Land-Office is directed to include in the account, the several reservations under various treaties with several tribes of Indians.

The first section of the Mississippi act requires the Commissioner of the General Land-Office to state an account between the United States and that State, upon the same principles of *allowance* and settlement as prescribed in the Alabama act, and the second section of the same act requires that that officer shall state an account between the United States *and each of the other States, upon the same principles, &c.* Now we submit that, under the phraseology of these several acts, upon any fair and just construction, the right to bring forward, by the United States, a set-off against the States of Ohio, Indiana, and Illinois, by reason of any expenditure on the Cumberland or National Road, does not exist.

It must be admitted that Ohio, Indiana, Illinois, and Missouri were the States, and the only States, referred to in the second section of the Mississippi act, as they were the only States having a like interest in any two-per-cent. fund.

It seems to be a self-evident proposition that some benefit was intended to be conferred on these States by the incorporation of the second section into the Mississippi act, but if the right of set-off against these States exists under this legislation, by reason of expenditures on the Cumberland Road, then no possible benefit could have been intended under the second section of the Mississippi act. It was simply, in such case, a sham and a delusion. But such was not the intention.

It is fair to infer that Congress knew as much in 1857 about the expenditures on the Cumberland Road as it does in 1874; and if Congress intended in 1857 that the two-per-cent. fund of these States should be absorbed by expenditures on the Cumberland Road, where would be the

injustice of Congress in 1874 providing for a recovery against these States of the balance expended by the United States on the Cumberland Road?

To compel these particular States to bear any part of the expenditure made by the United States on the Cumberland Road, under all of the circumstances would be, in the opinion of your committee, an act of injustice not in the least creditable to the United States nor to the good conscience of the Congress.

In 1859 Missouri, through her representatives in Congress, secured the passage of an act, similar to the Alabama act, under which she has been paid the full amount of her two-per-cent. fund, amounting to the sum of \$403,049.54, notwithstanding the fact that she was one of the States included in the second section of the Mississippi act. This special legislation for Missouri is accounted for by James S. Green, one of her Senators in 1859, and by Frank P. Blair, one of her Representatives at the same time, upon the ground that the existence of the second section of the Mississippi act was unknown to them at the time of the passage of the Missouri act, otherwise they would have applied for the two-per-cent. fund belonging to their State, under the second section of the Mississippi act.

In dealing with the States, this committee hold that the United States should do, as nearly as may be, equal and exact justice to all, dealing with all impartially and equitably. Thus it would seem that, even in the absence of *legal* obligations resting upon the United States to refund this two per cent. as to the States of Ohio, Indiana, and Illinois, in an *equitable* point of view, the United States should, in order to place Ohio, Indiana, and Illinois upon the same footing with Alabama, Mississippi, and Missouri, and in fact we might say with all the other landed States, refund to these States the two-per-cent. fund so long withheld as being justly, legally, and equitably their due. The committee therefore recommend the passage of the accompanying bill.

R. J. OGLESBY.
JAS. K. KELLY.
T. W. TIPTON.
WM. WINDOM.
D. D. PRATT.

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IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1874.—Ordered to be printed.

VIEWS OF THE MINORITY.

Mr. WADLEIGH submitted the following as the views of the minority of the Committee on Public Lands upon the "bill to settle certain accounts between the United States and the States of Ohio, Indiana, and Illinois :"

The minority of your committee respectfully beg leave to submit the following as their views and their reasons for dissenting from the conclusions of the majority :

The object of this bill is to compel the accounting officers of the Treasury to allow and pay to Ohio, Indiana, and Illinois 2 per cent. of the net proceeds of lands sold by Congress therein ; which 2 per cent., by the acts admitting said States into the Union, was to be applied or disbursed by Congress in making roads leading to them, and which has thus been entirely expended.

The said 2 per cent. claimed by Ohio is about \$400,000 ; by Indiana, about \$415,000 ; and by Illinois, about \$475,000.

This legislation is demanded on the following grounds :

First. That the United States has not performed its compacts with reference to making a road to said claimant States.

Secondly. That the United States has relinquished and paid this 2 per cent. to some other States.

Thirdly. That Congress, by act of March 3, 1857, directed the Commissioner of the General Land-Office to allow and pay this 2 per cent. to the claimants.

Fourthly. That the claimants are entitled to the 2 per cent., in order that they may be treated as liberally as some younger States.

What were the contracts of the United States as to this 2 per cent. ?

The oft-repeated assertion that the United States agreed with each of the claimant States, to make a road to and through them all, is disproved by the record.

The first act for the admission of Ohio was passed April 30, 1802, (2 Stat., 175.) Section 7 presented to the territorial convention for its "free acceptance or rejection" three propositions. The first offered section 16 in every township (or its equivalent if sold) for the use of schools ; the second offered to the State the six miles reservation containing salt springs ; the third provided that 5 per cent. of the net proceeds of the lands sold by Congress within the State should be "applied to laying out and making public roads leading from the navigable waters

emptying into the Atlantic, to the Ohio, to the said State and through the same; such roads to be laid out with the consent of the several States through which the road should pass."

Said three propositions were upon the condition that the lands sold by Congress within the State should be exempted from taxes for five years.

Ohio accepted the propositions only on condition that Congress should ratify certain amendments thereto, which Congress did, by act of March 3, 1803. (2 Stat., 226.) One of these amendments required the 5 per cent. to be divided, and three-fifths paid to Ohio for laying out, opening, and making roads within that State.

At the first session of the Ninth Congress a construction was given to this compact. The act of 1802 was referred to a committee of the Senate, (upon which was Thomas Worthington of Ohio,) with instructions to report how the money appropriated by that act should be applied.

The committee reported, December 19, 1805, that the act of 1803 left unexpended 2 per cent. of the appropriation in the act of 1802, "which now remains for the laying out and making roads leading from the navigable waters emptying into the Atlantic, to the river Ohio, to said State."

It also reported "a bill to regulate the laying out and making a road from Cumberland to the State of Ohio," which became a law March 29, 1806. (2 Stats., 357.) Section 6 appropriated \$30,000 "to be paid first out of the fund of 2 per cent. reserved for laying out and making roads to the State of Ohio, by virtue of section 7 of the act of April 30, 1802; three per cent. of the appropriation contained in said section 7 being directed, by a subsequent law, to the laying out, opening, and making roads within the State of Ohio; and, secondly, out of any money in the Treasury not otherwise appropriated, chargeable upon and re-imbursable at the Treasury, by the said fund of 2 per cent., as the same shall accrue."

This contemporaneous construction clearly proves that the said acts of 1802 and 1803 obliged Congress only to *apply* the 2 per cent. to the making of a road *leading to* Ohio.

Indiana and Illinois were admitted under similar acts. The act of April 19, 1816, (3 Stat., 289,) for the admission of Indiana, provides that the 2 per cent. "shall be applied to the making of a road or roads *leading to* the said State, under the direction of Congress."

The act of April 18, 1818, (3 Stat., 430,) for the admission of Illinois, provides that the 2 per cent. "shall be *disbursed*, under direction of Congress, in making roads leading to that State."

Have the United States applied and disbursed the 2 per cent. in making roads leading to the claimant States? .

Before the admission of Indiana in 1816, Congress made seven appropriations for constructing the Cumberland road east of the Ohio River; thus applying \$710,000, payable, in express terms, out of the 2 per cent. fund.

By the general appropriation act of March 3, 1819, which received the vote of every Senator and Representative of the claimant States in Congress, \$535,000 was appropriated for making the Cumberland road east of the Ohio River; and it was likewise enacted that that sum, "together with the amount heretofore advanced by the United States for making said road, shall be repaid out of the fund reserved for laying out and making roads to the States of Ohio, Indiana, and Illinois, by virtue of the several acts for the admission of the aforesaid States into the Union."

Subsequently acts making appropriations for the Cumberland road west of the Ohio River were passed as follows:

March 3, 1825, (4 Stat., 128).....	\$150,000 00
March 25, 1826, (4 Stat., 151).....	110,000 00
March 2, 1827, (4 Stat., 215).....	170,000 00
May 19, 1828, (4 Stat., 275).....	175,000 00
March 2, 1829, (4 Stat., 351).....	150,000 00
May 31, 1830, (4 Stat., 427).....	200,000 00
March 2, 1831, (4 Stat., 469).....	244,915 85
July 3, 1832, (4 Stat., 557).....	270,000 00
June 24, 1834, (4 Stat., 680).....	450,000 00
March 3, 1835, (4 Stat., 772).....	300,000 00
July 2, 1836, (5 Stat., 71).....	600,000 00
March 3, 1837, (5 Stat., 195).....	390,000 00
May 25, 1838, (5 Stat., 228).....	459,000 00
	3,668 915 85

Nearly all these were special acts; all received the support of the claimant States in Congress, and in all it was enacted in unmistakable terms that the sums appropriated should be charged against, and payable from, the 2 per cent. fund reserved for laying out and making roads under the direction of Congress leading to the claimant States and to Missouri.

When the above-mentioned act of March 3, 1837, passed the Senate, a motion to strike out the section for the repayment of the appropriation from the 2 per cent. fund, was defeated by the votes of all the Senators from the claimant States.

The claimants admit that the United States expended upon the Cumberland road in all \$6,760,400.07.

Of this immense sum \$2,834,034.21 was expended east of the Ohio River; \$2,077,631.06 in Ohio; \$1,128,289.50 in Indiana; and \$742,445.30 in Illinois.

Yet the 2 per cent. of all three States amounted to less than \$1,300,000.

It is not contended that the United States made with either of the claimant States any other contract than those contained in the said organic acts.

Those acts themselves, as well as contemporaneous and long-continued legislation relating thereto, conclusively prove that the United States was bound to the claimant States only to apply the 2 per cent. in making a road leading to said States.

It is admitted that the United States has thus applied the entire 2 per cent. and much more.

Yet it is argued that the United States has not fulfilled said contracts, for the following reasons:

1st. Because the eastern terminus of the road was located at Cumberland, where the river Potomac was not navigable.

2d. Because a costly macadamized instead of a cheap, dirt road was constructed.

3d. Because the road was given up to the States in which it lies, and by them subjected to tolls.

4th. Because the people of the three States must have supposed that the United States would complete the road to and through all such States.

5th. Because the road, as made, did not benefit the people of said States.

1 and 2. The selection of Cumberland as a terminus, and the macadamization of the road, were decided by the aid of the influence and votes

of Ohio. In 1805 the committee of the Senate, in its report hereinbefore referred to, unanimously recommended Cumberland as the eastern terminus of the road, because it would thus "meet and accommodate the roads leading from Baltimore and the District of Columbia." That committee also reported a "bill to regulate the laying out and making a road from Cumberland, in the State of Maryland, to the State of Ohio," which seems to have passed the Senate without division or debate. A motion to postpone it in the House was thus opposed by the sole representative of Ohio.

"Mr. Morrow, of Ohio, believing this road would be conducive to the interests of the Western people, that it was the best and most direct route, and that the fund would be adequate to the object, was adverse to the postponement and in favor of the bill." (Annals of Ninth Congress, first session, 836.)

Under that act the President appointed Joseph Kerr, of Ohio, (who afterward represented that State in Congress,) and Thomas Moore and Eli Williams, of Maryland, commissioners to lay out the road. In 1806 they unanimously reported that "the location of the first point for the route at Cumberland was a decision founded on propriety, and in some measure on necessity," and also that a "firm, substantial, stone-capped road could be completed for not over \$6,000 per mile, exclusive of bridges over the principal streams." In accordance with that report, aided by the votes of Ohio, the eastern terminus of the road was selected, and by like aid and the votes of the other claimant States, the road was macadamized. Even as late as 1848 the legislature of Indiana resolved that the citizens of that State had given up their lands for a "macadamized road."

A decent respect for the memory of the early settlers of Ohio requires us to believe they were too intelligent to wish the 2 per cent. wasted in making a road over a part of the route where good roads were made and repaired by the State of Maryland.

3. As to tolls. By the compacts, the United States was not bound to keep the road in repair. When the first ten miles of the Cumberland road had been nearly completed, the question how it should be kept in repair was raised in a message from the President to the House of Representatives. The subject was referred to a committee, on which was Jeremiah Morrow, who represented Ohio in Congress eighteen years, and was her governor for four years. On the 14th of April, 1812, he reported an appropriation of \$30,000 for completing the road to Brownsville, with the following resolution:

"*Resolved*, That provision be made for the levying of toll sufficient to keep the same in repair."

(1 Roads and Canals, 632.)

At a later day the members of Congress from the claimant States advocated levying tolls to repair the road, and ridiculed the objections thereto. Said Hon. O. H. Smith, of Indiana, in the House, in 1829:

Why, sir, is all this ado about toll-gates at this time? It cannot be possible that gentlemen are so much alarmed at toll-gates as they pretend to be. What are your post-offices but toll-gates? What are any of your offices for collecting money to pay the expenses of Government but toll-gates?

Upon the 4th of February, 1831, the legislature of Ohio passed an act for taking the Cumberland road in that State, and levying tolls upon the same, when the assent of Congress could be obtained.

Similar acts were afterward passed by Pennsylvania, Maryland, Virginia, and Indiana, and accordingly Congress surrendered the road to the States in which it was located.

The claimant States never opposed levying tolls to repair the road, but the advocates of "State rights" disputed the right of Congress to levy tolls, and finally, by the action of the claimant States—Ohio leading the way—a compromise was effected by the surrender of the road.

To make that action the basis of these claims is absurd and unjust.

4. The next argument of the claimants, logically rendered, is as follows:

The people of the three States "must have been lacking in ordinary intelligence" if they supposed the 2 per cent. would complete the road to and through all the States.

But they were not lacking in ordinary intelligence. Therefore, the United States was bound to go beyond the plain terms of the compacts and complete the road to and through all said States.

The first proposition of this syllogism is incorrect, and the third is a *non sequitur*.

It is absurd to argue that unless they were "lacking in ordinary intelligence," the inhabitants of the claimant States could not have over-rated the amount of the 2 per cent. fund, or underestimated the cost of a great highway to be made for hundreds of miles through a wilderness. One need not go outside the District of Columbia to refute this theory. Human fallibility in such matters is notorious, and if Congress adopts such a theory it will stultify itself.

The speech of Mr. Morrow in 1806, hereinbefore quoted, and the speeches of other members of Congress from the claimant States, during more than twenty years, advocated appropriations upon the ground that the fund was adequate to complete the road.

5. It is also argued by the claimants that the road did not benefit the claimant States.

Yet the history of the Northwest and the debates in Congress abound in evidence of the immense benefit conferred upon the claimant States by the Cumberland road. Their growth and prosperity depended upon their having an outlet through the rugged and mountainous region lying east of the Ohio River. The Cumberland road gave them a continuous line of finished macadamized road for 302 miles—171 miles of which was west of the Ohio—graded 30 feet wide and macadamized with broken stones 20 feet wide and 9 inches deep. Even where it was not fully completed it afforded great advantages for travel and traffic. Emigration poured over it, across the mountains, beyond the Ohio and through the claimant States. To it is greatly due the almost fabulous early growth of that part of our country.

From 1815 to 1833 Benjamin Ruggles was a Senator of the United States from Ohio. Lanman's Directory of Congress says of him that "he served on many of the most important committees, and from his well-known habits of industry and constant devotion to the interests of his constituents, was called the 'wheel-horse of the Senate.'"

Addressing the Senate in 1825, he said:

When those States were admitted into the Union, the Congress of the United States, by their several acts authorizing the people to form for themselves a constitution and State government, agreed that if the States would not tax the public lands after they had been sold, that five per cent. arising out of the net proceeds of the sale of those lands should be appropriated for the purpose of making roads; three per cent. of which was to be laid out within the States by their respective legislatures, and two per cent. by the authority of Congress in making a road leading to those States.

Ohio was the first State that was admitted into the Union upon this principle. This took place in 1803. When the two per cent. which had been reserved for the purpose of making a road leading to that State had accumulated so as to justify an expendi-

ture, Congress passed a law, in 1806, authorizing commissioners to be appointed to survey and lay out a road from Cumberland, in Maryland, to the State of Ohio.

After the survey and location were completed, annual appropriations were made by Congress for constructing the road, until it was finally completed from Cumberland to Wheeling, on the Ohio River, a distance of 135 miles. This road lies entirely within the States of Maryland, Pennsylvania, and Virginia. Not one rod is within any of the new States. *The contract with the State of Ohio is fulfilled*; the road has been made to the boundary of that State; the two per cent. that has arisen, and will hereafter arise, has all been expended. Ohio, therefore, has no further claim upon Congress for any portion of the two per cent. which may be produced by the future sales of land in that State. It is but justice to admit that a greater sum of money has been expended in making the Cumberland road than the two per cent. would amount to in the State of Ohio. This excess must be considered as a direct appropriation from the Treasury for the accomplishment of a great national object, in which the whole western country had a direct and beneficial interest.

He proceeded by saying that he could "show to the Senate from substantial evidence, that no more money would be required to make the road from Wheeling to Saint Louis than would arise from the two per cent. fund, when the public lands shall all have been sold in the States of Indiana, Illinois, and Missouri."

After giving an estimate of the amount of the two per cent. fund from future sales, he adds:

This sum, it will be seen by the following estimates and calculations, will be sufficient to complete the road the whole distance. * * *

The commercial and political advantages that the nation, and particularly the western country, has derived from the construction of the Cumberland road, have been immense. * * *

It is admitted on all hands that the making of the Cumberland road has reduced the price of carriage more than one-half, by which a clear saving is made to the people of the East and West of at least \$300,000 a year, which in six years will amount to the price of making the road. * * *

It has been clearly shown that the 2 per cent. fund will be abundantly adequate to make the road to the Mississippi River, and this the Western States are fairly entitled to by solemn contract. All that is now asked is a moderate anticipation of that fund, which will be repaid in the course of a few years.

Such was the voice of Ohio in 1825, speaking in behalf of the three States, through her ablest and most faithful representative in Congress. Now she leads the three States in a raid upon the impoverished national treasury, seeking by a new construction of the original compacts and newly-invented pretexts, to obtain the money which in 1825 she admitted had been fully expended to the great benefit of the western country, and in absolute fulfillment and discharge of the compact with Ohio.

It is now claimed that the road should have been made in a continuous line. Yet it was made otherwise in compliance with the wishes of the people of the claimant States. The act of July 2, 1836, provided that the moneys appropriated for making the road in Ohio and Indiana should be expended in completing the greatest possible continuous portion thereof in said States; but that provision was repealed at the next session of Congress, upon the motion of a Senator from Indiana. (Cong. Deb., 1836-'37, 803.)

It is true that Congress contemplated the completion of the road to Saint Louis, and it would probably have been completed had not the building of railroads demonstrated that when completed it would be comparatively useless. But the United States was not bound by any compact with the claimant States to complete it.

Strong evidence that such was the universal understanding as to the compact is found in the act of May 15, 1820, (3 Stat., 604,) which passed by the votes of all the members of Congress from the claimant States. It enacted that three commissioners should be appointed by the Presi-

dent to lay out the route of the Cumberland road from the Ohio River to the Mississippi River, with this proviso:

"Provided, always, and it is hereby enacted and declared, That nothing in this act contained, or that shall be done in pursuance thereof, shall be deemed, or construed to imply, any obligation on the part of the United States to make, or defray the expense of making, the road hereby authorized to be laid out, or any part thereof."

The claimant States contend that they should have the 2 per cent. because other States have had it.

It is true that in 1812 the United States gave the whole 5 per cent. to Louisiana for protecting the levees, and in 1836 to Arkansas and Michigan for roads and canals within those States. It is also true that the 2 per cent. funds reserved by the United States for making roads leading to Alabama and Mississippi were relinquished to those States for internal improvements therein. But the 2 per cent. funds of all those States when thus given and relinquished were wholly unapplied and unexpended.

The 2 per cent. funds of the claimant States have been wholly applied and expended with the consent and by the votes of their representatives in Congress. That the United States paid the 2 per cent. once in the cases of Louisiana, Alabama, Arkansas, Mississippi, and Michigan, furnishes neither a reason nor a precedent for paying it twice in the case of the claimant States.

But it is true that the case of Missouri is not wholly unlike that of the claimant States. Some part at least of her 2 per cent. fund had been expended in making a road leading to her borders. But she had derived comparatively trifling benefit from it. The jealous and hostile attitude of Illinois prevented the location of the road through Western Illinois.

Illinois insisted upon Alton, and Missouri upon Saint Louis, as the point of crossing the Mississippi River. After years of bitter controversy, which delayed the work in Illinois, in 1836 the legislature of that State unanimously resolved that consent should be given for the location of the road to Alton, and nowhere else. Her representatives in Congress contended that the United States could not construct the road elsewhere. The people of Missouri were equally determined that the road should go to Saint Louis. This controversy made it impracticable for Congress to expend anything upon the Cumberland road in or near Missouri, and in 1857 the 2 per cent. was relinquished to her for roads and canals within the State. This subject does not seem to have been fully considered then, and under all the circumstances the action of Congress in the case of Missouri furnishes no precedent for its action here. Besides, if Congress in its legislation is to be governed by all the precedents, it will find it difficult, if not impossible, to legislate at all.

The claimant States also contend that, in 1857, Congress relinquished to them their respective 2 per cent. funds, free from set-offs for expenditures, and directed their allowance and payment, but that the Government officials ignorantly and stupidly refuse to allow and pay them.

This extraordinary theory is based upon the following facts:

Mississippi, in 1817, and Alabama, in 1819, were admitted under acts with provisions precisely like those referred to in the organic acts of Indiana and Illinois. Congress did not apply nor expend any of their 2 per cent. funds, and, by act of September 4, 1841, relinquished said funds to them, to be paid in 1842 and 1843, so far as they had then accrued, and quarterly thereafter as they should accrue, on condition that the

States should apply them to certain internal improvements. But, under Indian treaties, there were reservations of lands in Alabama and Mississippi which were withheld from sale.

For the purpose of settling their equitable claims on account of the Indian lands, Congress, in 1855 and 1857, passed acts as follows:

AN ACT to settle certain accounts between the United States and the State of Alabama.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the Commissioner of the General Land-Office be, and he is hereby, required to state an account between the United States and the State of Alabama, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, under the sixth section of the act of March second, eighteen hundred and nineteen, for the admission of Alabama into the Union, and that he be required to include in said account the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to the said State five per centum thereon, as in case of other sales.

Approved March 2, 1855.

AN ACT to settle certain accounts between the United States and the State of Mississippi, and other States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the General Land-Office be, and he is hereby, required to state an account between the United States and the State of Mississippi, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, on account of the public lands in said State, and upon the same principles of allowance and settlement as prescribed in the "act to settle certain accounts between the United States and the State of Alabama," approved the second of March, eighteen hundred and fifty-five; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw and Choctaw Indians within the limits of Mississippi, and allow and pay to the said State five per centum thereon, as in case of other sales, estimating the lands at the value of one dollar and twenty-five cents per acre.

SEC. 2. *And be it further enacted,* That the said Commissioner shall also state an account between the United States and each of the other States upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre.

The latter act passed without debate March 3, 1857, the second section being added as an amendment.

The claimant States now contend that said second section relinquishes to them their 2 per cent. funds, long ago expended, and directs the allowance and payment of the full amount of their claims.

Such a construction is unjust, could not have been intended by Congress, and is not warranted by the terms of the acts.

The acts of 1855 and 1857 require that accounts shall be stated between the United States and the States having the 5 per cent. section in their organic acts; that such accounts shall be stated for the purpose of ascertaining the amounts due to the States not before settled; and that in such accounts the States shall be allowed and paid 5 per cent. upon the lands reserved under Indian treaties.

The accounts were to be stated for the purpose of ascertaining the amounts due the States not before settled. Therefore nothing was to be allowed to the States in such accounts except what was due.

The 2 per cent. was due to Alabama and Mississippi because it had been relinquished and made payable to them by the act of 1841. Therefore, if unpaid, it must be allowed in such accounts.

But the 2 per cent. is not, and never has been, due to the claimant States, because it was never relinquished or made payable to them. The acts of 1855 and 1857 do not relinquish the 2 per cent., nor allude to it unless it was due by virtue of other acts. The only claim the claimant

States have to it, they derive from their organic acts. But the organic acts provide, not that the 2 per cent. shall be paid to the claimant States, but that Congress shall apply it in making roads.

The fact that the 2 per cent. was never due to the claimant States was the reason why the expenditures made from it were never charged against these States on the books of the Departments. It was the money of the United States which the United States had agreed to expend in making roads, but which could not be due nor payable to the States without some act of Congress making it so; and, not being due to the claimant States, it could not go into their accounts to be allowed under the acts of 1855 and 1857.

But, according to all the authorities, an account is a statement of both debits and credits, receipts and expenditures. Therefore, even if the 2 per cent. of the claimant States could go into the account, the expenditures from it for the Cumberland road must necessarily go in also, as by the acts of Congress they were paid from and chargeable to that fund.

Legally, the 2 per cent. of the claimant States cannot be included in the accounts required by the acts of 1855 and 1857, because such 2 per cent. is not due them. Equitably, it cannot be thus included, because it has all been expended, and, if included, would be more than balanced by expenditures lawfully made from it.

Lastly, it is contended by the claimant States that they should have the 2 per cent. now, notwithstanding it has been expended, because they have been treated less liberally than some of the newer States. It is undoubtedly true that the policy of the General Government has grown more and more liberal in respect to the public lands; but no obligation rests upon the United States to go back seventy years and equalize the benefits which citizens, municipalities, or States have derived from the General Government. It is utterly impracticable to do so. If such a policy is applied to the public lands it should be applied to all other subjects. Before being applied to the claimant States it should be applied to other States far less favored in all respects. Such a policy, if adopted, will place the weak at the mercy of the powerful; will lead to distrust, jealousy, and strife; will bankrupt the Treasury, and in the end destroy the Government.

For these reasons we are of the opinion that this bill should not pass.

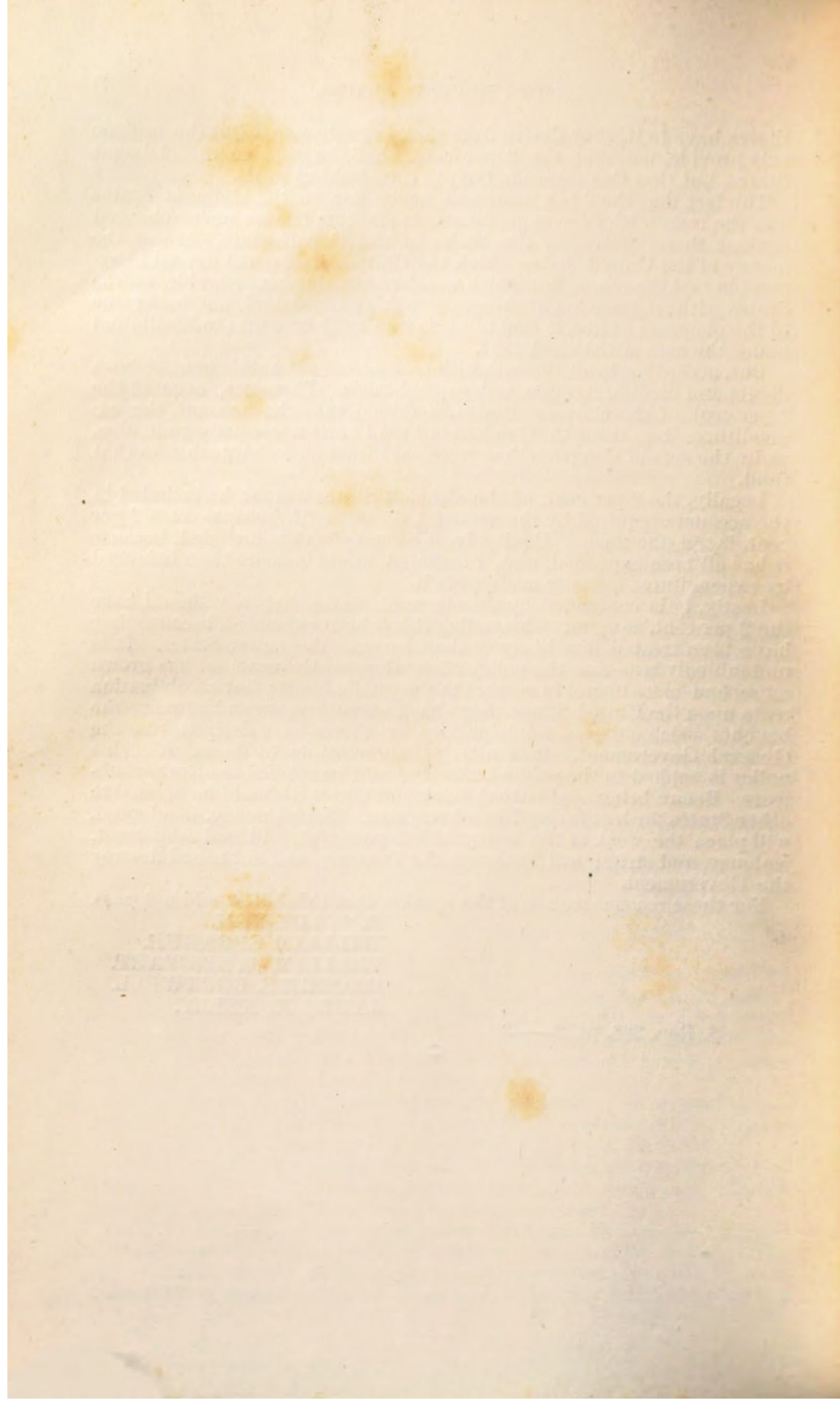
B. WADLEIGH.

WILLIAM SPRAGUE.

WILLIAM M. STEWART.

GEORGE S. BOUTWELL.

JAMES K. KELLY.



IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill H. R. 1934.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 1934) for the relief of Pat. O. Hawes, report as follows ;

On the 21st day of August, 1863, Hawes resigned the captaincy of Company F, Fourteenth Kentucky Volunteer Infantry, for the purpose, as alleged in his resignation, "*of entering the service in another capacity.*" He immediately afterward was authorized by the governor of Kentucky, with other persons, to raise the Forty-fifth Kentucky Volunteer Infantry ; was mustered into the United States service on the 1st day of September, 1863, and at once entered on the duties of his office. He was the first officer mustered into said regiment, and swore in all recruits, made all reports to the adjutant-general, issued commissary and quartermaster stores, and, in short, did all the duties for the regiment, it being distinctly understood that he (Hawes) was to be the major of the regiment. Upon its organization he was defeated in the election ; afterward went to his home in Louisville. There he was arrested, being an officer mustered into the service, and absent without authority. The commanding general of the department gave him permission to visit Washington, when Special Order No. 5, series of 1864, was issued, mustering him out of the service, to date the day he was mustered in. Lieutenant Hawes performed the service for the time from the date of his muster-in to the date of the receipt of the order mustering him out. He could not enter into any other business after the organization of the regiment until his muster-out, because he was an officer of the United States, and was subjected to the orders of the officers appointed over him.

It is respectfully recommended that the bill do pass.

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IN THE MATTER OF THE ESTATE OF

The undersigned, being a duly qualified and sworn Auditor of the Estate of the deceased, do hereby certify that the following is a true and correct statement of the assets and liabilities of the said Estate as of the date of the closing of the accounts, to-wit: the 31st day of December, 1900.

The assets of the said Estate as of the date of the closing of the accounts, to-wit: the 31st day of December, 1900, were as follows: Cash on hand, \$100.00; Cash in bank, \$200.00; Real estate, \$500.00; Personal property, \$100.00; Total, \$900.00. The liabilities of the said Estate as of the date of the closing of the accounts, to-wit: the 31st day of December, 1900, were as follows: Due to creditors, \$100.00; Due to the executor, \$100.00; Total, \$200.00. The net assets of the said Estate as of the date of the closing of the accounts, to-wit: the 31st day of December, 1900, were as follows: \$700.00.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill S. 344.]

The Committee on Military Affairs, to whom was referred the bill (S. 344) for relief of William Bowlin, having had the same under consideration, submit the following report :

The proof shows that William Bowlin was sworn into service with his company, as captain, Company L, Second Arkansas Cavalry, October 10, 1863, and performed duty as such, under orders of Col. J. E. Phelps, commanding said regiment, but was not able to secure muster until March 8, 1864, the mustering-officer declining to date muster back to October 10, 1863. The bill is to provide payment for such services for the intervening time.

Captain Bowlin recruited his company under orders and reported same, entering upon duty with eighty-four men October 10, 1863 ; was responsible for property, and the fault of non-muster was not chargeable to him. The committee recommend passage of the bill.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill S. 455.]

The Committee on Military Affairs, to whom was referred the bill (S. 455) for the relief of W. M. Kimball, having had the same under consideration, submit the following report:

The proof shows that W. M. Kimball was commissioned by Gov. Alex. Ramsey as lieutenant and quartermaster of the Eleventh Minnesota Volunteers, October 10, 1862, and entered upon his duties as such officer. On the 18th of October, 1862, certain parts of companies recruited for and forming the Eleventh Minnesota Volunteers were consolidated with the Tenth Minnesota Volunteers, leaving said Kimball without a command, but not mustered out of service. Being supernumerary, he was, however, retained on duty by Generals Pope, Sibley, and other officers until May 8, 1863, when he was appointed a captain and assistant quartermaster of volunteers. This bill is to pay Kimball for his services as lieutenant and quartermaster from October 10, 1862, to May 8, 1863, rendered as aforesaid.

It appears also, from records of the War Department, that said Kimball performed important duties and made long and tedious journeys in the service of the Quartermaster's Department, and that said services were valuable and efficient.

The construction placed upon his status by the War Department, while technically correct, is a very severe one. In the early outset of the war the rules of the Army service were not fully understood, and in this case Kimball acted in good faith, although, perhaps, not in accord with Army regulations. The facts set forth in his petition are attested by the personal knowledge of Senator Ramsey, at that date governor of the State of Minnesota.

The committee, in view of all the facts, recommend passage of the bill.

IN THE MATTER OF THE ESTATE OF

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The Commission on the Administration of the State of Illinois, created by Act of the General Assembly, Chapter 111, Section 1, of the Acts of the 37th General Assembly, 1892, has the honor to submit herewith its report.

The Commission was organized on January 1, 1892, and has since that time been engaged in a study of the various departments of the State Government, with a view to determining the most efficient and economical method of conducting the same. It has held numerous public hearings, and has received many suggestions from the public. It has also conducted extensive research into the various problems connected with the administration of the State. The Commission believes that the most important of these problems are the following: 1. The organization of the State Government. 2. The method of selecting the various officers and employees of the State. 3. The method of paying the salaries of these officers and employees. 4. The method of collecting the taxes of the State. 5. The method of distributing the money of the State.

It appears that the most important of these problems is the organization of the State Government. The Commission believes that the most efficient and economical method of conducting the State Government is that which is based upon the principle of the separation of powers. This principle requires that the various departments of the State Government be organized into three distinct branches: the Executive, the Legislative, and the Judicial. Each of these branches should be independent of the others, and should be able to perform its own functions without interference from the other branches.

The Commission believes that the most important of these problems is the method of selecting the various officers and employees of the State. It believes that the most efficient and economical method of selecting these officers and employees is that which is based upon the principle of the election of the people. This principle requires that the various officers and employees of the State be elected by the people, and that their salaries be fixed by the people. The Commission believes that this principle is the only one which will insure the most efficient and economical administration of the State.

The Commission believes that the most important of these problems is the method of collecting the taxes of the State. It believes that the most efficient and economical method of collecting these taxes is that which is based upon the principle of the uniformity of the taxes. This principle requires that the taxes of the State be levied upon all property in the State, and that the rate of the taxes be the same for all property of the same kind.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1874.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT:

[To accompany bill S. 436.]

The Committee on Military Affairs, to whom was referred the bill (S. 436) for the relief of Lieut. John Shelton, having had the same under consideration, submit the following report :

This case has been before this committee during two previous sessions of Congress, and has been twice considered and reported favorably. Your committee, concurring with the opinion then expressed, adopt in part the report submitted last Congress by the Senator from Louisiana, Mr. West, as follows :

That the evidence submitted in this case shows that Lieutenant Shelton recruited and organized a full company of loyal North Carolinians, and was appointed first lieutenant of said company by Major-General Schofield, to date the 1st day of September, 1863, the day his company was organized. That owing to the unsettled condition of the Army in East Tennessee at that time, and the siege of Knoxville soon following, Lieutenant Shelton was unable to be mustered in. After the siege of Knoxville was raised, Lieutenant Shelton was ordered by General Schofield, with a detachment of his company, to join the Third North Carolina Mounted Infantry, to make a raid into the enemy's lines, for the purpose of destroying the railroad bridges between Greensborough and Salisbury, N. C., a distance of three hundred miles in the rebel lines, which cut off the enemy's communication with Richmond. Lieutenant Shelton remained on duty with the Third North Carolina Mounted Infantry by the orders of General Schofield, being constantly in the front in active duty. His company was full and complete, and there was no other first lieutenant in said company; and that he never received any pay for his services as said officer.

The evidence also shows that Lieutenant Shelton remonstrated against being ordered upon distant duty without being mustered into the service, and that, accompanied by the colonel of his regiment, who, under oath, substantiates this statement, he went to General Schofield, and requested to be so mustered; that General Schofield replied, "It makes no difference; proceed at once on the raid, and all will be right." A copy of the orders of General Schofield, requiring Lieutenant Shelton to accompany the expedition which eventually debarred him from the opportunity of being mustered into the service, being presented by the claimant, has been certified to by the War Department as genuine, under date of January 12, 1873, and such certificate accompanies this report.

The claimant having obeyed orders to his own prejudice, and it being in evidence that he rendered the service for which the accompanying bill proposes to compensate him, the committee report the same, and recommend its passage.

IN THE SENATE OF THE UNITED STATES

REPORT

OF THE

REPORT

OF THE

The Committee on Education and the Arts, in response to a resolution of the Senate, passed May 12, 1875, relating to the report of the Secretary of the Interior, in relation to the lands of the United States.

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IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill S. 91.]

The Committee on Claims, to whom was referred the bill (S. 91) for the relief of Louisa H. Hasell, with accompanying papers, have had the same under consideration, and submit the following report:

The bill proposes to pay Mrs. Hasell \$350 in full compensation for the use, by the United States Army, of her house and other buildings in Summerville, S. C., in the years 1865-'66, and for all damages to said property incident to said occupancy.

From the papers accompanying it appears that the property consisted of a dwelling of six rooms, a wooden building for servants, and stable. These buildings were in good order and habitable when they were taken possession of by Colonel Beecher, United States Volunteers, and used as a small-pox hospital, from the 6th day of July, 1865, to May 6, 1866. Petitioner was paid \$50, or at the rate of \$5 per month, for this use, there being no contract at the time possession was taken. The kitchen and stable were almost, if not quite, destroyed, and the property otherwise very much injured. Those dying of small-pox were buried in and upon the lot and, since the surrender, petitioner has been unable to rent or use the premises. The testimony is abundant that, for the use of the premises and the damages sustained, petitioner would be entitled to as much and probably more than she claims.

These facts are shown by several affidavits of parties cognizant of the circumstances, and all of the correspondence of the Army officers to whom the claim was referred, and they are fully corroborated in the report of a board of Army officers especially detailed to examine this claim, said report concluding as follows:

"First. That the property was occupied by the Government as a small-pox hospital from July 6, 1865, to May 6, 1866, a period of ten months, and that \$50 in currency was paid, at the rate of \$5 per month, as rent for the same.

"Second. That the amount of damages sustained is all and probably more than set forth in the accompanying affidavits," (which was \$350, as now claimed.)

"Therefore the board do recommend that the sum claimed (\$350) be awarded and paid to the said Louisa H. Hasell."

This report was returned by the acting assistant adjutant-general (Louis V. Caziarc) to the chief quartermaster, approved, and payment

was suspended until Congress should remove restrictions on the payment of claims which arose in States lately in rebellion.

It also appears that the rent of this property was the only income of petitioner, who has herself and two daughters to support.

And it may be added that the matter was at one time referred to Surgeon W. H. Eldridge, U. S. A., who reported that the house, after its use as a hospital, was not habitable, and ought to be burned to prevent small-pox contagion; and also that the chief quartermaster of the department found the recommendation of the board to be reasonable and approved the same.

We have in these facts a strong case of actual and uncompensated injury. A stronger one could hardly be made. The only point upon which a doubt could be raised, perhaps, relates to the want of more affirmative proof of loyalty. When we consider, however, the unquestioned and undeniable hardship of the case—that a fair presumption of loyalty arises from the fact that the Government paid claimant rent for this property; that it was occupied for awhile and injured somewhat after the proclamation declaring the insurrection at an end in South Carolina; as also the strong indorsement of the justice of the claim by the Army officers; and, after looking at the facts, making the case not a little exceptional, we conclude to report the bill back and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1874.—Ordered to be printed.

Mr. WADLEIGH submitted the following

REPORT:

[To accompany bill S. 492.]

The Committee on Military Affairs, to whom was referred the bill (S. 492) "authorizing the city and county of San Francisco to use the Presidio reservation as a park and highway," having had the same under consideration, beg leave to report as follows :

That said reservation, now belonging to and in possession of the United States, consists of overtwo and a half square miles of land, situated on the immediate northwest side of said city of San Francisco, and contains the only extensive body of arable land near the city and on the peninsula suitable for a park.

That the soil of this land is generally good, and is well watered with springs; that it mostly faces to the east and south, and is in full view of the bay and city of San Francisco; that these lands are now chiefly used for a cow-pasture, and are wholly uncultivated and unadorned.

A very large and numerously-signed petition from the citizens and tax-payers of the city and county of San Francisco; resolutions of the legislature of California; and resolutions of the board of supervisors of San Francisco petitioning for the passage of this bill, are presented.

A copy of the bill having been submitted to the Secretary of War, he recommends the following modifications: that on the first page, fourteenth line, before the first word in the line, introduce the following: "And that portion not exceeding one hundred acres in extent, comprising the site of." On the second page, fifteenth line, add to the last word in the line the letter "s," so that it will read "reservations."

Your committee being of the opinion that the petition should be granted, but at the same time desiring that the bill should be so framed as to prevent any doubtful construction, present the accompanying as a substitute and recommend its passage.

THE JOURNAL OF THE
AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., U.S.A.
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IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1874.—Ordered to be printed.

Mr. MITCHELL submitted the following

REPORT:

[To accompany bill S. 644.]

The Committee on Claims, to whom was referred the petition of Mrs. Caroline M. Purviance and Francis Wyeth, praying compensation for the use and occupation, as well as for the destruction of their property at Saint Joseph, Mo., by the military authorities of the United States, having considered the same, beg to submit the following report :

The petitioners allege, and the allegations of the petitioner are clearly sustained by the evidence submitted, that they are, and have been since the summer of 1859, the joint owners of lot number three, in block number twenty-two, in the city of Saint Joseph, in the State of Missouri ; that when they purchased this property in 1859, and at the time the same was taken possession of by the military authorities of the United States, as hereinafter stated, there were two substantial frame dwellings thereon in good condition and repair ; on the north half of said lot was a frame building, one story high, fronting 20 feet on Main street, and extending back 80 feet, with room on Main street with an open front used for store-room, and also containing four additional rooms ; and on the south side of said lot was a new three-story frame building fronting 20 feet on Main street, and extending back 80 feet, and having also an open front. This latter building had on the lower floor one large room used as a store-room, full size of the building, and on the second and third floors twenty-six rooms, which adjoined and were attached to the Planters' Hotel, and were rented and used by the proprietors of such hotel as a part of it.

That, during the years 1858, 1859, and part of 1860, the whole property was rented at an annual rental of \$2,700, and during the latter part of 1860 and first part of 1861, and up to and immediately prior to its occupation by the Federal forces, the said two buildings were rented at the annual rental of \$1,700.

That, on the 20th day of September, 1861, this property, including the two buildings—without the consent of the petitioners or their agents—was taken possession of by a portion of the Thirty-ninth Regiment of Ohio Volunteers, then in the service of the United States, and was by them used and occupied as quarters during the time they remained in Saint Joseph ; and that, immediately on their departure, the

Sixteenth Regiment of Illinois Volunteers, under command of Col. Robert F. Smith, took possession of said premises and continued to occupy them until February, 1852, when they were vacated by said regiment and taken possession of by Captain Phelps and his command—Company A, of the Fourth Regiment of Missouri State Militia, (Col. George H. Hall,) then serving in the United States service. Captain Phelps's command being cavalry, he occupied the first floor of one of the buildings for a stable and forage-house. The other rooms were occupied by the soldiers as quarters. That said buildings were occupied constantly by the Federal forces as quarters, forage-rooms, and stables for horses, without the consent of the petitioners and against the protest of their agent, from the 20th of September, 1861, until in the month of July, 1863, in all twenty-two months.

The testimony shows that, by reason of their occupancy as stables, quarters, forage-rooms, &c., both of these buildings were rendered entirely worthless, and soon after they were vacated by the troops (in September, 1863,) were declared a nuisance by the city authorities of the city of Saint Joseph and directed to be, and were, torn down, and the lumber from the wreck was valued at \$250. The lowest estimate made by any witness of the two buildings, at the time they were first occupied as stated, is \$3,800.

The evidence shows, and it is a part of the history of the country, that the news of the defeat of General Lyon at Wilson's Creek, in August, 1861, caused a general rising of the rebel element in Northwest Missouri, and in this portion of the State all legitimate civil authority was, to a very great extent, suspended. Union troops were hastily, but very imperfectly, organized, and without provision for their maintenance other than they could collect in the country.

Saint Joseph was selected as the place for collecting supplies and organizing Union troops in sufficient numbers to oppose the confederate army. At this time there were no regularly organized commissary or quartermaster departments connected with these organizations, and commanders of the Federal forces took possession of such buildings for their quarters, stables, and forage-rooms as the necessities of the case demanded. And it was under such circumstances that these buildings were seized and occupied.

It appears from the affidavit of Wm. M. Wyeth that he was the agent of the petitioners, who are citizens of the State of Pennsylvania, and who were then residing there; that he, as agent for said buildings at the time the same were being occupied by Capt. B. H. Phelps's company (A, Fourth Missouri Cavalry,) notified the quartermaster in charge that the company above described were using the first floor as a stable and forage-house, but received no answer to his communication.

The records of the War Department fail to show that any allowance has ever been made or paid to either of the petitioners, either for the use and occupation or damage done to their premises; and the affidavits, both of the petitioners and their agent, show they have never received anything. All the material facts are fully sustained by the affidavits of Brig. Gen. Benjamin F. Loan, Maj. T. J. Chew, Wm. M. Wyeth, Rufus H. Jordan, Rufus K. Allen, W. S. Elliott, and others, all certified by officials in the State of Missouri to be reliable persons.

It further appears from the testimony, and your committee find, that the petitioners were thoroughly and actively loyal to the Government of the United States during the rebellion.

You committee further find, as conclusions of law based upon the above findings of facts, that the Government of the United States is

liable for, and should pay to the petitioners, the reasonable value of the use and occupation of said premises for the time they were occupied as aforesaid by the Federal troops, and also for the damage done to said premises by reason of such occupancy. And in view of all the circumstances of the case—the said premises having been so used for one year and ten months, and the said buildings almost wholly destroyed by such use—your committee find petitioners are entitled to the sum of \$4,500 in full for all use and occupation and destruction of their said property, and they report the accompanying bill and recommend its passage.

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The following table shows the results of the investigation of the cases of the disease in the different parts of the country. The results are given in the following table:

TABLE I.—RESULTS OF THE INVESTIGATION OF THE CASES OF THE DISEASE IN THE DIFFERENT PARTS OF THE COUNTRY.	
Part of the Country.	Number of Cases.
North.	100
South.	150
West.	200
East.	250
Central.	300
South-West.	350
North-West.	400
South-East.	450
North-East.	500
Central-West.	550
Central-East.	600
South-West-West.	650
South-West-East.	700
North-West-West.	750
North-West-East.	800
South-East-West.	850
South-East-East.	900
North-East-West.	950
North-East-East.	1000
Central-West-West.	1050
Central-West-East.	1100
Central-East-West.	1150
Central-East-East.	1200
South-West-West-West.	1250
South-West-West-East.	1300
South-West-East-West.	1350
South-West-East-East.	1400
North-West-West-West.	1450
North-West-West-East.	1500
North-West-East-West.	1550
North-West-East-East.	1600
South-East-West-West.	1650
South-East-West-East.	1700
South-East-East-West.	1750
South-East-East-East.	1800
North-East-West-West.	1850
North-East-West-East.	1900
North-East-East-West.	1950
North-East-East-East.	2000
Central-West-West-West.	2050
Central-West-West-East.	2100
Central-West-East-West.	2150
Central-West-East-East.	2200
Central-East-West-West.	2250
Central-East-West-East.	2300
Central-East-East-West.	2350
Central-East-East-East.	2400
South-West-West-West-West.	2450
South-West-West-West-East.	2500
South-West-West-East-West.	2550
South-West-West-East-East.	2600
South-West-East-West-West.	2650
South-West-East-West-East.	2700
South-West-East-East-West.	2750
South-West-East-East-East.	2800
North-West-West-West-West.	2850
North-West-West-West-East.	2900
North-West-West-East-West.	2950
North-West-West-East-East.	3000
North-West-East-West-West.	3050
North-West-East-West-East.	3100
North-West-East-East-West.	3150
North-West-East-East-East.	3200
South-East-West-West-West.	3250
South-East-West-West-East.	3300
South-East-West-East-West.	3350
South-East-West-East-East.	3400
South-East-East-West-West.	3450
South-East-East-West-East.	3500
South-East-East-East-West.	3550
South-East-East-East-East.	3600
North-East-West-West-West.	3650
North-East-West-West-East.	3700
North-East-West-East-West.	3750
North-East-West-East-East.	3800
North-East-East-West-West.	3850
North-East-East-West-East.	3900
North-East-East-East-West.	3950
North-East-East-East-East.	4000
Central-West-West-West-West.	4050
Central-West-West-West-East.	4100
Central-West-West-East-West.	4150
Central-West-West-East-East.	4200
Central-West-East-West-West.	4250
Central-West-East-West-East.	4300
Central-West-East-East-West.	4350
Central-West-East-East-East.	4400
Central-East-West-West-West.	4450
Central-East-West-West-East.	4500
Central-East-West-East-West.	4550
Central-East-West-East-East.	4600
Central-East-East-West-West.	4650
Central-East-East-West-East.	4700
Central-East-East-East-West.	4750
Central-East-East-East-East.	4800
South-West-West-West-West-West.	4850
South-West-West-West-West-East.	4900
South-West-West-West-East-West.	4950
South-West-West-West-East-East.	5000
South-West-West-East-West-West.	5050
South-West-West-East-West-East.	5100
South-West-West-East-East-West.	5150
South-West-West-East-East-East.	5200
South-West-East-West-West-West.	5250
South-West-East-West-West-East.	5300
South-West-East-West-East-West.	5350
South-West-East-West-East-East.	5400
South-West-East-East-West-West.	5450
South-West-East-East-West-East.	5500
South-West-East-East-East-West.	5550
South-West-East-East-East-East.	5600
North-West-West-West-West-West.	5650
North-West-West-West-West-East.	5700
North-West-West-West-East-West.	5750
North-West-West-West-East-East.	5800
North-West-West-East-West-West.	5850
North-West-West-East-West-East.	5900
North-West-West-East-East-West.	5950
North-West-West-East-East-East.	6000
North-West-East-West-West-West.	6050
North-West-East-West-West-East.	6100
North-West-East-West-East-West.	6150
North-West-East-West-East-East.	6200
North-West-East-East-West-West.	6250
North-West-East-East-West-East.	6300
North-West-East-East-East-West.	6350
North-West-East-East-East-East.	6400
South-East-West-West-West-West.	6450
South-East-West-West-West-East.	6500
South-East-West-West-East-West.	6550
South-East-West-West-East-East.	6600
South-East-West-East-West-West.	6650
South-East-West-East-West-East.	6700
South-East-West-East-East-West.	6750
South-East-West-East-East-East.	6800
South-East-East-West-West-West.	6850
South-East-East-West-West-East.	6900
South-East-East-West-East-West.	6950
South-East-East-West-East-East.	7000
South-East-East-East-West-West.	7050
South-East-East-East-West-East.	7100
South-East-East-East-East-West.	7150
South-East-East-East-East-East.	7200
North-East-West-West-West-West.	7250
North-East-West-West-West-East.	7300
North-East-West-West-East-West.	7350
North-East-West-West-East-East.	7400
North-East-West-East-West-West.	7450
North-East-West-East-West-East.	7500
North-East-West-East-East-West.	7550
North-East-West-East-East-East.	7600
North-East-East-West-West-West.	7650
North-East-East-West-West-East.	7700
North-East-East-West-East-West.	7750
North-East-East-West-East-East.	7800
North-East-East-East-West-West.	7850
North-East-East-East-West-East.	7900
North-East-East-East-East-West.	7950
North-East-East-East-East-East.	8000
Central-West-West-West-West-West.	8050
Central-West-West-West-West-East.	8100
Central-West-West-West-East-West.	8150
Central-West-West-West-East-East.	8200
Central-West-West-East-West-West.	8250
Central-West-West-East-West-East.	8300
Central-West-West-East-East-West.	8350
Central-West-West-East-East-East.	8400
Central-West-East-West-West-West.	8450
Central-West-East-West-West-East.	8500
Central-West-East-West-East-West.	8550
Central-West-East-West-East-East.	8600
Central-West-East-East-West-West.	8650
Central-West-East-East-West-East.	8700
Central-West-East-East-East-West.	8750
Central-West-East-East-East-East.	8800
Central-East-West-West-West-West.	8850
Central-East-West-West-West-East.	8900
Central-East-West-West-East-West.	8950
Central-East-West-West-East-East.	9000
Central-East-West-East-West-West.	9050
Central-East-West-East-West-East.	9100
Central-East-West-East-East-West.	9150
Central-East-West-East-East-East.	9200
Central-East-East-West-West-West.	9250
Central-East-East-West-West-East.	9300
Central-East-East-West-East-West.	9350
Central-East-East-West-East-East.	9400
Central-East-East-East-West-West.	9450
Central-East-East-East-West-East.	9500
Central-East-East-East-East-West.	9550
Central-East-East-East-East-East.	9600
South-West-West-West-West-West-West.	9650
South-West-West-West-West-West-East.	9700
South-West-West-West-West-East-West.	9750
South-West-West-West-West-East-East.	9800
South-West-West-West-East-West-West.	9850
South-West-West-West-East-West-East.	9900
South-West-West-West-East-East-West.	9950
South-West-West-West-East-East-East.	10000

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1874.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT :

[To accompany bill S. 647.]

The Committee on Claims, to whom were referred the petition and accompanying papers of James Cameron and Emma S. Cameron, his wife, praying compensation for the use and destruction of property by the Army, have had the same under consideration, and beg leave to make the following report :

This claim was reported by the Committee on Claims of the Senate, Forty-second Congress, but was not acted on in the House, and the papers were again referred early in this session to Senate Committee on Claims.

James Cameron was the owner of a lot of ground, containing about forty acres, beautifully located in the suburbs of the city of Chattanooga, Tenn., known as Cameron Hill. It was in an excellent state of improvement, occupied a commanding position, covered with large forest-trees. It was used as a family residence by Mr. and Mrs. Cameron, when the Union Army, commanded by Maj. Gen. W. S. Rosecrans, entered the city of Chattanooga; that soon thereafter the property was taken possession of and used by the Army for such purposes as they deemed best.

The timber, which added greatly to the value of the place, was cut off and used for fuel, being the only way at that time for supplying that necessary article to the Army. The out-houses and fencing were entirely destroyed, and fortifications erected on the land.

It is made evident by the proof taken that such use was absolutely essential to the proper protection of the Army, as well as for maintaining their position at Chattanooga. The opposing forces were at that time but a short distance from the place, holding our Army; as it were, in a state of siege.

Major-General Rosecrans, by special field order No. 69, appointed a commission for the adjustment of claims against the United States. The petitioners in this case filed their claim before that commission, in which they state the amount due them to be \$24,987.50.

The proof taken before that commission fully establishes the ownership and destruction of the property specified, and that the loss to the claimants was at least \$10,000. The commission accorded the claimants the sum of \$20,000.

Among the papers submitted to the committee in support of the claim in this case is a letter from Maj. Gen. U. S. Grant, commanding the

armies of the United States, dated August 9, 1864, and addressed to Mrs. Cameron, which is as follows :

HEADQUARTERS ARMIES OF THE UNITED STATES,
City Point, Va., August 9, 1864.

MY DEAR MADAM: Your letter of the 8th of July was duly received, but not so promptly answered. I know yours to be a case where prompt payment should be made, and am willing to so indorse your claim. I believe your property at Chattanooga has been appraised by a board of officers. If so, send me the proceedings of the board, and I will make my indorsement and return them to you. If you have no such evidence of the claim, inform me, and I will order a board to assess it, and will indorse the proceedings. This will be the first step toward a collection.

Yours, truly,

U. S. GRANT.

Mrs. CAMERON.

The following indorsement appears upon the statement of the claim made by claimants, viz:

HEADQUARTERS ARMIES OF THE UNITED STATES,
City Point, Va., October 25, 1864.

I know the property within described, and the parties owning it, well. Mr. Cameron and his wife have been unflinching friends of the Government from the beginning of our troubles to the present day. There are no more thoroughly loyal people anywhere in the North, and they are entitled to protection and pay for their property converted to Government use. What is now known as Fort Cameron, Chattanooga, was the private property of Mr. Cameron. From its elevated and commanding position, it had to be taken and fortified. By this means the entire property, with improvements, has been entirely destroyed for private use. I would recommend that the property be purchased at a fair valuation for Government use.

U. S. GRANT, *General*.

The question presented for determination is, who ought to bear the loss thus incurred in the prosecution of the war, the Government or the loyal owner? The party who took property and used it for its own advantage, or the one from whom the property was taken, and who received no advantage or compensation therefor? It is true the property is located within one of the seceding States, but in a section of the State where a majority of the inhabitants maintained their allegiance to the Federal Government. The committee do not see, however, that this in any way affects the true answer to be given to the question raised. They agree with the opinion expressed in the above quoted indorsement of General Grant: "Loyal people are entitled to protection and pay for their property converted to Government use."

The committee therefore report a bill for the payment of the amount, \$10,000, found to be due the claimants, and recommend that it do pass.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1874.—Ordered to be printed.

Mr. SARGENT, from the Committee on Naval Affairs, submitted the following

REPORT:

The Committee on Naval Affairs report back the bill to restore Captain Albert G. Clary, United States Navy, to his original position on the naval list, and ask to be discharged from further consideration thereof for the reasons given in Report No. 148, first session Forty-third Congress, which said report discusses and covers all the points made in the said bill and accompanying petition.

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Ira W. Douthard, late of Company D, Thirteenth Regiment of Iowa Volunteers, submit the following report:

It appears from the evidence that the petitioner enlisted on the 10th of November, 1864, as a private in Company D, Thirteenth Regiment Iowa Volunteers, and was honorably discharged from the service on the 21st of July, 1865, at Louisville, Ky.

He claims that while on the march, near Petersburg, Va., about the 5th of May, 1865, he received a sun-stroke, fainted, and was carried away unconscious; that he has suffered much from the effects of this sun-stroke and has never recovered. He does not claim that he ever received treatment in any hospital, nor does he produce any evidence of disability from any surgeon or officer connected with the regiment.

The Adjutant-General reports that the rolls furnish no evidence of the soldier's disability.

Two privates of his company, however, swear that Douthard had a sun-stroke at the time he states and was unable to travel for an hour, and that then and afterward he suffered greatly from its effects. His family physician testifies to his sound bodily health before entering the service.

From the 19th of December, 1867, to — of July, 1868, the soldier was in the Iowa hospital for the insane, and under the care of Dr. Mark Ramsey, who testifies that the patient's disorder was mania, with a good deal of excitement of mind, sleeplessness, and restlessness, and symptoms of cerebral congestion. The physician knew nothing personally of his history, but expresses the opinion that the patient's nervous system had received a shock and injury in the United States service, and that there was a constant liability to mental derangement. In a subsequent affidavit, he says he was convinced that Douthard's disorder had its origin in exposure to a burning sun during a march in 1865, and that he was permanently disabled in a partial degree. The soldier swears that after his discharge he went to school two years.

This case was considered at the Pension-Office and up to this time has not been allowed. The Commissioner of Pensions says, in a letter to the committee, "There being no record-evidence of alleged disability, claimant was called upon to furnish the evidence of a commissioned officer as to time, place, and circumstances under which the alleged disa-

bility was contracted. He has, however, declared his inability to do so, and therefore favorable action cannot be taken by this office."

It seems from the evidence that, notwithstanding the sun-stroke, the soldier continued to perform duty with his company, from the 5th day of May until the 21st day of July, following, when he was mustered out with his company.

The case is a doubtful one, but the committee do not feel authorized on the evidence before them to overrule the decision of the Commissioner. It does seem to us that if the sun-stroke was of the serious character claimed, that its effects must have developed themselves before the soldier's muster out. They therefore ask to be discharged from the further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

APRIL —, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Elizabeth Davis, mother of W. L. Davis, praying to be restored to the pension-roll, submit the following report :

The said W. L. Davis was a private in Company E, Twentieth Maine Volunteers. His mother was allowed a pension on account of his death in the service, and because she was dependent upon him for support. The payment of this pension was suspended February 1, 1870, upon report of Special Agent E. A. Harding, of non-dependence. He reported to the Commissioner of Pensions that the petitioner and her husband were in good health; that the family at home consisted of them and a daughter of age; that two other daughters were in the millinery business in Boston; that they owned a good farm, with an orchard on it, a mile from Union Village, which usually cuts twenty tons of hay; that the buildings were in a good condition; that the stock on the farm consisted of a good horse, three cows, and some young cattle; the whole property, real and personal, being worth \$3,000, the town-tax for that year being, on the real estate alone, the sum of \$17.55, on a valuation of less than two-thirds.

Mr. Harding further reported that the husband of the petitioner was considered by reliable, intelligent men of the place to be in good financial circumstances, with income sufficient for his own and wife's maintenance.

He further reported, that the son, on account of whose death Mrs. Davis had been drawing a pension, was of intemperate habits before enlisting, and his mother was never dependent on him for aid. In conclusion, he expressed the opinion that the income from the property was sufficient for the support of Mr. Davis and his wife.

This report was combatted on the 30th November, 1872, by the joint affidavit of three neighbors of Davis and wife, who had known them for twenty years. The trouble with their affidavit is that on the main point they speak from hearsay only. They also state conclusions rather than facts in relation to the value of the property. They say nothing on the point of the son's intemperate habits, but dwell on the immaterial point of the radical political sentiments of Mr. Davis, and infer that his enemies misled the special agent.

On the subject of the value of the property, real and personal, and the taxes it pays, the agent stands uncontradicted, nor is anything said to the effect that the daughters are not willing and able to supply the needs of the family if the income from the farm should fall short.

Thinking, as we do, that the report is in all substantial respects true, we think the Commissioner was right in dropping Mrs. Davis from the roll, and we ask to be discharged from the further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of George W. Truehart, praying to be allowed an increase of pension, report :

The petitioner alleges that he lost a leg and an arm in the service in the battles of the Wilderness, but is receiving a pension of only \$20 per month, which he asks may be increased.

Upon referring to the date of the petition and the file-marks on it, it appears it was drawn up on the 22d day of January, 1872, and was introduced and referred on the same day. Since that time the pension-law has been changed, and the pension increased for disabilities of this class to \$24 per month. If the soldier has not already applied to the Pension-Office for the increase, he is at liberty to do so, and requires no relief from Congress.

The committee therefore ask to be discharged from the further consideration of the petition.

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IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1874.—Ordered to be printed.

Mr. RAMSEY submitted the following

REPORT:

[To accompany bill S. 651.]

In 1845 Congress made an appropriation for the construction of the first telegraph line ever built. The Government doubted the success of the experiment. Private parties better understanding the capabilities of the telegraph and foreseeing its power and importance, extended lines in every direction, until in 1874 a network of about 170,000 miles of telegraph-wire is thrown over the whole country, binding North with South, East with West, reaching through every State and into the remotest Territory. Over these lines there are sent about 20,000,000 press, commercial, and social messages a year. No daily paper could live without its telegraphic news, for the telegrams are always the first, often the only, part of the paper read.

Merchants transact their business on the basis of telegraphic quotations and orders, while the most important and urgent social correspondence is forwarded by telegraph. The power of the telegraph, continually and rapidly increasing, can scarcely be overestimated. It is the means of influencing public opinion through the press, of acting upon the markets of the country, and of seriously affecting the interests of the people.

This mighty power is in the hands of private parties. It is uncontrolled by any uniform law; its first interests are private—its vast resources used primarily for private ends. It was originally divided between many organizations in different sections of the country, either co-operating or in competition with each other; these have been absorbed by the Western Union Telegraph Company.

The postal-telegraph system proposes, by uniting the telegraph with the Post-Office, to control its power, to regulate its business, diminish its operating expenses, increase its facilities, reduce the rates, and thus bring it into general use.

This subject has been, at different times, presented to Congress by the President of the United States in his message, and by the Postmaster-General in his reports, and has lately been fully and ably discussed by Messrs. Hubbard and Orton, the former favoring the postal-telegraph system; the latter, the president of the Western Union Telegraph Company, in opposition to it. Their arguments and evidence have been printed by order of the Senate, and accompany this report. The attention of the Senate is particularly directed to them as a full and exhaustive discussion of both sides of the question. It will appear from a comparison of their arguments that they differ more in regard to the time and manner of uniting the telegraph with the Post-Office than in the ultimate necessity of the union.

The powers of Congress over the postal-service are mainly derived from the eighth section of the first article of the Constitution, which empowers Congress to regulate commerce, to establish naturalization and bankrupt laws, to coin money, to establish post-offices and post-roads, to declare war, to raise an army, maintain a navy, with other analogous powers, and to make all laws for carrying into execution the foregoing powers.

A consideration of the objects to be accomplished by the powers thus conferred shows that most if not all of them are within the exclusive jurisdiction of, and can therefore be executed only by, Congress. Whenever the Supreme Court of the United States has discussed the provisions of this section, it has decided that the powers thereby granted were exclusively vested in Congress; that the States have no jurisdiction except in those cases where Congress has not legislated upon the subject, and then only as to regulations of commerce in merely local matters entirely within the bounds of the State, or in insolvency, and even in these cases when the national authority intervenes the State jurisdiction is suspended, and its laws become inoperative.

Post-offices are established for the purpose of receiving and delivering letters, papers, and packets, post-roads for their transmission.

The Constitution does not limit the means of executing the powers conferred by it on Congress to the instrumentalities in use at the time of its adoption, but with a wise forecast provides for the future, and gives ample scope for every improvement and advance in arts and science. Steamboats and railroads, invented since the adoption of the Constitution, are in daily use by the War, Naval, and Post-Office Departments. The telegraph is used by the Army and Navy, but the Post-Office Department does not employ it for the transmission of correspondence. In all countries but our own the telegraph is used as an adjunct to the post-office department. It is not regarded as a source of revenue, nor are the people taxed for its support, but it is intended to be, like the post-office, self-supporting, and used by all. In America it is controlled by a single private corporation, and a large net revenue is derived from its high rates, which weigh like a heavy tax upon the few who can afford or are compelled to use it. The letter and the telegram accomplish the same end—the interchange of thought between parties separated from each other. The only difference is in the expedition of the communication. If the telegraph is interrupted, the correspondence goes by mail. The greater part of the telegraphic correspondence is between parties living in different States. All the States have passed laws upon the subject, but there is no uniformity in them, and as they are confined in their operation to the jurisdiction of the State, they cannot regulate the transmission of correspondence between different States. As Congress has passed no laws on the subject, all interstate telegrams are controlled only by such regulations as the companies make in their own interest. Congress alone has the power to regulate this business by uniform laws.

The only law Congress has passed relating to the telegraph is the act of 1866, which authorizes telegraph companies to construct lines of telegraph on all post-roads, to pre-empt and use unoccupied lands in the Territories, and provides that the United States may purchase their lines at an appraised value. The exclusive jurisdiction of Congress over the transmission of other correspondence is admitted, and the committee know of no reason why the same jurisdiction should not extend to all correspondence, by whatever agencies transmitted. If this view is correct, telegraphic, like other correspondence, ought to be performed through the Post-Office Department, and not by any private corporation.

The necessity of establishing a postal telegraph will appear by considering the character of the business transacted by the Western Union Telegraph Company, and its importance to the public interests. This company transmits ninety per cent. of the telegraphic business; its lines extend through every part of the country, and, by its contracts with the cable companies, it controls the telegraphic business with the Old World. Telegraphic correspondence is divided into three classes: press, commercial, and ordinary business and social telegrams.

1st. The relations of the telegraph with the press. Every leading daily paper in the country obtains its telegraphic dispatches from two allied associations—the New York Associated Press, which collects the news, and the Western Union Company, which transmits it. There are other press associations in each section of the country, as the New England, Western, Southern, &c., and subordinate associations in every city. The consent of each member of a subordinate association must be obtained before any new paper can receive the associated news.

The business of collecting, transmitting, and publishing this news has practically become a monopoly. All contracts for its transmission are terminable at the will of the Western Union Telegraph Company, either without notice or at the expiration of thirty days.

The Western Union Telegraph Company has exercised its power to terminate these contracts and cut off papers from receiving the Associated Press news in the case of the *Alta Californian*, of San Francisco. It can discriminate by raising the rate to one and reducing it to another, thus ruining one and favoring the other. This power it exercised in the case of the *San Francisco Herald*, raising the rates from seven to fifteen cents a word, and reducing them to the Associated Press of California from 2.4 to 1.28 a word to each paper.

The telegraph company, or the Associated Press, have notified newspapers that they would withhold the associated news from them if they criticised such dispatches. This power was exercised in the case of the *Petersburg Index*. It has contracted with the press associations that they “will not, in any way, encourage or support any opposition or competing telegraph;” and the circular of the press association says: “That clause was to the telegraph company a valuable consideration for the favorable terms upon which they contracted with us.” That is, the Western Union has bound the Associated Press, as part of the price paid for the transmission of its news, to oppose any other telegraph company, and then point to the columns of the papers as evidence that neither the journals themselves nor the public desire a change. These evils have been mitigated by rival news associations, in connection with competing telegraph companies, but it is the policy of the Western Union Telegraph Company to amalgamate rival lines, and thereby end all competition, and reduce the press to entire subjection to its power.

2d. The relations of the telegraph to commercial news. The commercial news of the world is collected, transmitted, and sold to merchants by the Western Union Telegraph Company. Transactions in money-matters, the prices of cotton, grain, pork, and other staples, are governed in every market by these dispatches, and if there is delay in receiving them, financial and mercantile operations cease until they are received. The Western Union Company secures priority in the transmission of this news, by the exclusive use of the necessary through-wires, thus rendering competition impossible. Formerly commercial news was supplied to merchants in Cincinnati by another party, but on the organization of the Commercial Bureau of the Western Union Company, its dispatches had priority, were first delivered, and the rival failed.

It is not claimed that the present executive officers of the company use this bureau for improper purposes, yet there is nothing to prevent other officers, at some future time, or subordinate officers at the present time, from speculating upon the prior information they receive, through this bureau, of every fluctuation in prices. The power over the markets which a party monopolizing both the telegraph and the Commercial News Bureau holds is too apparent to require elaboration.

3d. The relations of the telegraph to ordinary correspondence.

A telegraphic communication, as we have shown, differs from a letter only in the method of transmission, and at reduced rates telegrams will be sent as freely as letters.

The reduction of telegraph rates one-half in Belgium and Switzerland, doubled the correspondence in one year; one-half the business is on social matters. A reduction of one-third in England, doubled it in little more than two years. In America, where the rates are high, the principal use of the telegraph is for emergent cases, and only about ten per cent. of the correspondence is of a social character. The average distance telegrams are sent in England is about one hundred miles, rates twenty-five cents. In this country the rates for the same distance are fifty cents, and though the wages here are much higher, the difference is nearly balanced by the greater skill of our operators, and the use of improved instruments.

The average rate in Europe is thirty-six cents, in America it is about sixty cents.* The increase of the telegraphic correspondence last year was sixteen per cent., while the increase of the correspondence by mail was seventeen per cent. It is neither equal to the increase in the general business of the country, nor of the telegraphic business of Great Britain; it is only the normal growth of the business. The rates have been reduced forty per cent. within five years, the facilities and efficiency of the service greatly increased, but with little effect in increasing the business. These reductions have arisen principally from the reorganization of a system formerly in a chaotic state, with arbitrary and irregular rates, differently adjusted in every section of the country into a uniform system. No reductions have been made between the principal cities of the East, and only a few between those in the West or South.

The postal-telegraph system proposes that all telegrams shall be received and delivered through the post-office, and transmitted between postal-telegraph offices by a company organized for that purpose, which shall furnish its own lines, operators and equipments, acting as agent of the Post-Office Department in the transmission of telegrams, as the railroad companies now act in the transmission of the mails. The rates will be fixed by Congress, and the Post-Office Department will receive a postage of five cents on each telegram, and pay over the remainder of the sums received from the rates to the Postal-Telegraph Company.

By this arrangement the entire profit of the company must depend upon the efficiency, promptness, and economy with which the business is performed.

The sole end of a telegraph system is the receipt, transmission, and delivery of telegrams; it should neither control the press nor commercial news, but should provide by uniform and low rates for the transmission of press and news telegrams, and give equal rights to all, and should not buy or sell commercial press news.

The difficulties in transmission of telegrams for the press under the present system arise from the close connection between the New York

* See table annexed to this report.

Associated Press, which collects the news, and the telegraph company that transmits it to the various press associations.

The president of the Western Union Telegraph Company is a trustee of the New York Tribune, which is one of the members of the New York Associated Press. The publisher and one of the proprietors of the New York Times is a director in the Western Union Telegraph Company, showing the intimate relations that exist between these organizations.

The operations of the postal-telegraph system would result in the speedy termination of this alliance, and will be a very important step toward the freedom of the press. Another difficulty under the present system arises from the low rates to the Associated Press for the "specials," as well as for the Associated Press news, and the higher rates to all others, rendering it almost impossible to start a new daily paper.

The proposed bill reduces the rates so greatly that it is believed "specials" under the postal system will be as cheap as the Associated Press news under the present. The rates for night "specials" from Washington to a single Boston paper are \$3 for a hundred words, or \$4.50 if the same special is delivered to two papers, without any provision for reduced rates where it is dropped at way-stations. Under the proposed plan, the rates for the same service to one paper would be \$1.50, to two papers \$1.70, with one-third less rates when dropped at way stations. These rates are less than those now charged to the Boston papers for the Associated Press news. Under the postal-telegraph system the agency now employed for the collection and distribution of commercial news will be re-organized, and its business performed by associations organized by merchants for that purpose. The low rates offered to such associations will not only correct existing evils, but prevent many other abuses, to which the present system offers a great temptation. Associations of the press and of merchants can be organized as freely as if there were rival and independent telegraph companies. The provision for specials at these low rates will, it is believed, make as great change in the relations of the telegraph to the press as resulted from the transfer of the telegraph in England from private companies to the government. There the number of towns to which the news-reports are sent is nearly three times as large as formerly, and the number of subscribers for the commercial news increased in larger proportions.

The telegraph companies sent reports to one hundred and seventy-three journals, which was increased in one year, under the postal service, to four hundred and sixty-seven, while the number of words daily transmitted during the session of Parliament was increased from about six thousand to twenty thousand, and in the same ratio for the rest of the year.

The general and uniform reduction in rates and increase of facilities which will be made by the adoption of the postal-telegraph system will increase the telegraph business as greatly as reduced rates of postage did the letter correspondence, and the telegraph, which is now used in emergent cases, will become an ordinary means of correspondence; while if it remains in the hands of a private corporation, its growth, though not so rapid, will be steady, and will result in the diversion from the post-office of a large amount of correspondence, especially on the long mail-routes, and an equal loss of revenue to the Government. The expediency of adopting this system will be further apparent when we consider that the Post-Office seeks simply to be self-sustaining, and that its sole end is to promote the interests of the people, while a private corporation considers principally the interests of its stockholders and

only secondarily the public interest. The office business pertaining to the telegram and letter is analogous, and can be performed much more economically by one management than by several. The union of the telegraph with the post-office will, therefore, reduce the expenses of the telegraph without a corresponding increase in those of the Post-Office Department. The same principle underlies both the telegraph and mail service, that a large increase of business does not cause a corresponding increase in expenses. Double the business increased the expenses of the Western Union Telegraph Company 47 per cent. in five years, while for the same period the expenses of the Post-Office Department increased in the ratio of 42 per cent. for double the business. It is this fact that has enabled the Western Union Telegraph Company to make recent reduction in rates without reducing the net profits, and will aid the Postal-Telegraph Company in making the great reductions proposed by this system.

The argument that the Constitution has devolved upon Congress the duty of transmitting all correspondence, thereby including that by telegraph as well as that by mail, and that telegraphic correspondence is now unregulated by any general law, and, so far as relates to inter-State communication, is entirely unregulated, was not answered by Mr. Orton. Its application to the Western Union Telegraph Company was denied, on the ground that Congress has no right to pass this bill, because it contemplates the taking of private property for private and public use without just compensation, which is contrary to the Constitution; further, that it would be in violation of an express or implied contract, entered into between the Government and the telegraph companies in 1866, by which they acquired the right to construct lines of telegraph on every post-road of the United States, and in consideration thereof the company agreed to sell its lines to the Government at an appraised valuation; that the incorporation of a company to transact telegraphic business in the States, in competition with a corporation established by a State, would be in violation of the Constitution, because it would indirectly take private property for telegraph purposes, without just compensation, and that Congress has no right to condemn telegraph property in any other way than that prescribed in the act of 1866, namely, by the United States taking its property at an appraisal.

It does not appear why the simple incorporation of a company by Congress, any more than by a State, can be considered as a violation of the provisions of the act of 1866, or any powers acquired thereunder. The bill does not authorize the Postmaster-General to buy or construct lines, nor does it authorize the telegraph company to take private property, or any vested or implied rights of any telegraph company.

It does not propose that the United States should undertake the business of telegraphing, any more than the establishment of the postal service requires Congress to undertake the railroad business.

The act of 1866 is permissive, and gives the United States the right to purchase lines of telegraph, if it so elects, but does not make any contract or create any obligation. This bill regards the rights of existing telegraph companies as jealously as if the act of 1866 did confer all the rights claimed by Mr. Orton, as it requires the Postal-Telegraph Company to purchase the lines of the Western Union and all other telegraph companies at an appraised value, if they desire to sell, following the exact language of the statute of 1866. It does not, however, compel the sale, but leaves it optional with the company to sell its lines or continue its business.

It was further objected that this system contemplates a partnership

between the Government and a private corporation, the business of which conducted in Government offices by two classes of employés, the one responsible to the Government, the other to the managers of the corporation, conflicts must necessarily arise with the inevitable result of the subordination of the interests of the Government to those of the corporation; that it proposes a double-headed control of the Post-Office and telegraph company, while undivided power alone can successfully operate the telegraph.

It is answered that the proposed system will not create a partnership between the Post-Office and the Postal-Telegraph Company, as the Department will receive a fixed and adequate compensation for all the services rendered. It will divide the various departments of business now monopolized by the Western Union Telegraph Company, between different organizations. This division of interests the committee regard as one of the chief merits of the plan. It takes from the company that portion of the business which does not properly belong to a telegraph company, but it reserves to the company the undivided control over the transmission of correspondence, and over all its employés. It gives a certain authority to the Postmaster-General, which will be exercised through the officers of the company and not through the employés, over whom he will have no control.

The committee are of opinion that the absolute power supposed to be essential to the management, and which is now exercised by the Western Union, in raising and lowering the charges to the press, and in controlling the collection, transmission, sale, and delivery of the commercial news, is not only unnecessary but actually dangerous to the press, to commerce, and to the best interests of the country, and inconsistent with its institutions.

The duties of the Post-Office Department and of the Postal-Telegraph Company are clearly and sharply defined, to prevent any misunderstanding, while the independence of the company is preserved by the provision for a tribunal of reference, if any misunderstanding should arise.

In opposition to the opinion of Mr. Orton, that the proposed system will not work successfully, we have the disinterested opinion of the postmasters of two of our largest cities—General Burt, of Boston, and Judge Edmunds, of Washington—both of whom have carefully examined the whole subject, and believe it can be made a complete success. The former has introduced the telegraph into twenty or thirty post-offices in Boston and the adjacent cities and towns, to the great advantage of the public, and finds that where there are no telegraph-offices it is profitably operated in connection with the post-office. The actual success he has attained shows what can be accomplished when the union is complete.

It is said that the proposed system will create a great monopoly, and that the public are only exchanging one monopoly for a greater one. It is admitted that the telegraph business, like the mail-service, must be under one management, to be operated beneficially to the people, and with due regard to economy and promptness in the execution of the service. It is true it must be a monopoly, like the Post-Office, regulated by law, controlled by the public for public interests, and not by a private corporation for private ends. In addition to these benefits the substitution of the Postal Telegraph Company for the Western Union will place the business under the supervision of the Postmaster-General, will greatly increase the facilities, reduce the charges, and provide for still further reductions. Issues of fictitious stock, which have composed a very considerable proportion of the entire capital of the Western Union Telegraph Company, will be prohibited.

There are only three methods in which the telegraph business can be transacted: either by a private company unrestrained by any uniform system of law, by the proposed system, or by a purely governmental system.

It is believed that the system proposed combines the advantages of the private and governmental, and avoids many of the objections to each, and is therefore to be preferred. If experience should prove that it is not the best, Congress reserves the power either to terminate the contract or to buy the lines at an appraised value at any time.

It is objected that the proposed system will greatly increase executive patronage and power, by giving to the Post-Office the control of the telegraph. These objections would apply in a greater or less degree to a purely governmental telegraph, but not to the postal telegraph, because the patronage will only be increased by the additional employes required to perform the office business, which will not exceed five or ten per cent. of the present number of Post-Office employes. The control of the telegraph will be divided between a company solely interested in the telegraph as a means of realizing profits, and the Post-Office Department, which will have no control over the transmission of telegrams. It cannot be perverted to any political purposes by the Government without the co-operation of the company, and under the present system the telegraph can be used by Government in co-operation with the Western Union Telegraph Company as easily as under that proposed.

While, under the proposed system, the press is freed from the power which the Western Union now exercises over it, and with a free press but little danger need be apprehended.

The Western Union Telegraph Company is in many respects the greatest monopoly of this or any other country, for, as we have shown, by its unlimited power of raising and reducing charges to the press, the press may be subsidized to promote the private ends of the managers, and, by its control over the commercial-news bureau, it obtains prior knowledge of all fluctuations in prices, which may be used for private speculations.

Mr. Orton has not assigned any sufficient public reason why the transfer of the telegraph to the Post-Office should not take place immediately, while it does appear that the interests of the Western Union Telegraph have been greatly promoted by delay. When this committee reported a bill for uniting the two services, in January 1870, the stock of the Western Union Telegraph Company was selling at thirty-three per cent., while at the present time it is selling at eighty per cent. Its business and offices have doubled, its rates have been greatly reduced without increasing its capital or reducing its net income, its lines have been very greatly extended, and its stock is to-day much cheaper at the present price than at that time, and is steadily advancing in value. It is therefore evident that it is for the interest of the company to defer this union, and if the next five years should witness only the same advance as the last five, from \$13,000,000 to \$32,000,000, the value of the property will have increased to \$80,000,000.

The bill proposes an immediate and uniform reduction in the rates, at least one-third, as will appear by reference to the annexed table, comparing the rates by the present with the postal system, and this great reduction will be effected without cost to the Government, while a governmental system would involve the expenditure of many millions of dollars. The great cost of the telegraph lines to Great Britain will appear by the copy of the official statement annexed to this report.

The committee are satisfied, from the arguments of Mr. Orton, that the business can be performed at the proposed rates in union with the

Post-Office, and as the expenses will be less the rates can be lower, and the facilities greater if such union is made, than if the business should be carried on by a private company. These rates will, they believe, yield a liberal return upon the capital invested. The percentage of reduction of rates, $33\frac{1}{3}$ per cent., is as great as was made in Great Britain on the union of the two services, and as great as, in the opinion of Mr. Scudamore, the head of the English telegraph can safely be made at one time, with due regard to the prompt transmission of the increased business created by the union. A few extracts from a recent report of Mr. Scudamore will show the benefits the people of Great Britain have received from this union. The offices were increased from 3,162 in June, 1870, to 5,531 in June, 1873, while the average number of messages per office was raised from 58 to 63 per week, and the annual number of messages increased from less than 7,000,000 the year prior to the transfer to 18,000,000 last year, and these cost the public just what 9,000,000 would have cost under the old arrangement. It cost \$4,960,000 to send 14,000,000 messages in Great Britain; \$9,300,000 to send the same number in this country.

The dividends expected to be made by the Postal-Telegraph Company will exceed the interest upon bonds that would be issued by the Government, if it purchased the lines; but the greater economy obtained by retaining the management in the hands of parties who must look for their profits to such economy, will more than offset this difference.

This bill neither gives a monopoly to the Postal-Telegraph Company nor prohibits competition. The telegraph business can be carried on by any other company that can perform it more cheaply or promptly than under the postal system.

The bill gives telegrams the secrecy of sealed letters; throws around them the protection of law; punishes all tampering with their contents; shuts no old offices, but opens many new ones close to the homes of the people; and by the low rate for night-telegrams, thirty cents under 1,000 miles, and fifty cents for all greater distances, will create a business as great by night as by day, to the great benefit of the country, binding together all parts of the country by ties of interest and communication closer than any laws can do.

The committee believe that the measure will free the press from the weight constantly pressing upon it; will reorganize the commercial news department, and give to the public a cheap telegraph, with increased facilities, regulated by law, and that it should receive the sanction of Congress, and therefore report the accompanying bill, and recommend its adoption.

A BILL to provide for the transmission of correspondence by telegraph:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of facilitating correspondence, telegraphic messages shall be received at post-offices, and transmitted by telegraph between postal-telegraph offices, and delivered or sent to the addresses in the manner herein prescribed. The Postmaster-General shall establish telegraph-offices at all post-offices on telegraphic circuits, and at all other post-offices within ten miles of any such circuit, where the salary of the postmaster is not less than five hundred dollars per annum. And he shall establish telegraph-offices at such post-offices as shall hereafter come within the provisions of this section, and at such other places as, in his judgment, the wants of the public may require.

SEC. 2. That the charges for the transmission of telegrams, excepting service and Government telegrams, shall be prepaid by telegram-stamps, and the rates for telegrams of twenty words or less shall be as follows: When the distance of transmission is under two hundred miles, thirty cents; when over two hundred and under five hundred miles, fifty cents; when over five hundred and under seven hundred and fifty miles, seventy-five cents; when over seven hundred and fifty and under one thousand miles, one dollar; for all greater distances, one dollar and twenty-five cents; for telegrams directed to be transmitted by night, one thousand miles or less, thirty cents; for greater distances, fifty cents. All words shall be counted, and for every five additional words or less one-fifth additional rate shall be charged. These rates shall cover the cost of immediate and special delivery within half a mile of the telegraph-office, or within the letter-carrier delivery, and of transmission by mail when received at or destined for any place where there is no postal-telegraph office. All telegrams between the several departments of the Government and their officers, agents, and employés, and all such telegrams authorized or required by any officer or employé of the United States, in execution of any duty devolved on him by law, shall, when required by him, have priority in transmission without prepayment, and at rates to be annually fixed by the Postmaster-General. All other telegrams shall be transmitted in the order in which they are received, excepting telegrams directed by the addresser to be transmitted at night, namely, between the hours of seven o'clock in the afternoon and seven o'clock in the forenoon.

SEC. 3. That the charges for the transmission of special telegrams to newspapers and commercial news associations for each one hundred words or less, for each circuit of two hundred and fifty miles, shall not exceed seventy-five cents if sent at night, and one dollar during the day; but when copies of the same telegram are dropped off at one or more offices, the rate for each office shall not exceed fifty cents at night and seventy-five cents during the day, and at the same pro-rata rate for each word in excess. Where special telegrams are delivered at the same office for two or more newspapers, ten cents additional shall be charged for each one hundred words or less, for manifolding for each newspaper receiving the same. The charges for telegrams for press-associations or special telegrams shall not exceed those now paid by the Associated or American Press for like service.

SEC. 4. That the Postmaster-General is hereby authorized and directed to contract with "The Postal-Telegraph Company," incorporated by this act for the transmission of correspondence by telegraph, according to the provisions of this act; such contract to be terminable at the option of Congress. The Postmaster-General shall furnish at each postal-telegraph office such suitable place for the office, employés, instruments, and batteries of said company as shall be necessary for its business. Said company shall have the right to construct lines on all post-routes, and shall provide lines of telegraph to every postal-telegraph office on request of the Postmaster-General. It shall keep its lines at all times, unavoidable casualties excepted, in good repair; furnish, at its own expense, competent operators, good instruments, and all equipments necessary for using the same efficiently and constantly. It shall promptly and correctly transmit by telegraph all telegrams received by it at any postal-telegraph office to the postal-telegraph office of delivery. After the payment of ten per centum per annum upon its capital stock, its profits shall be appropriated to the construction and the extension of its lines, and to the reduction of the charges for tele-

grams, under the direction of the Postmaster-General. In case it shall fail to perform the service and duties imposed upon it under and according to the provisions of this act, the Postmaster-General may make deductions from the pay of the company for such failure, according to existing laws regulating the Post-Office Department.

SEC. 5. That the Postmaster-General shall provide telegram-stamps and stamped paper of suitable denominations, to be sold as postage-stamps are now sold. The originals of all telegrams shall be kept in the office of deposit for three months, and at the end of that time, with all copies thereof, shall be destroyed, unless any such original shall be called for by the sender, when it shall be delivered to him. The Postmaster-General shall make rules and regulations for telegraphic money-orders and registered telegrams, with reasonable charges therefor. All persons shall have the right to correspond by telegraph in the manner herein prescribed. Telegrams shall be privileged communications in law to the extent that sealed letters now are. All provisions of law relating to the destruction or defacement, or to the receipt, transmission, or delivery of mailed letters, or to the custody, sale, canceling, or defacement of stamps, to forging or counterfeiting, or to stealing, or to the unlawful use of the same, shall apply to telegrams and to telegram-stamps. All telegraphic lines operated under the provisions of this act are hereby established as post-routes. Any person who shall willfully obstruct, postpone, or delay the transmission or delivery, or unlawfully divulge or permit to be read or seen by others, the contents of any telegram, or any part thereof, or any copy or duplicate thereof, or who shall injure or destroy any of the property of said company, or interfere with the operation, repairs, or use of any line of telegraph, or any part thereof, shall be deemed guilty of a misdemeanor, and, upon conviction in the district or circuit court of the United States for the district where such offense shall have been committed or where such person shall reside, shall be liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding two years, and also liable for damages to the party injured thereby. The Department of Justice shall prosecute all persons offending against any of the provisions of this act in the name of the United States.

SEC. 6. That if any tax shall be levied or assessment made on the property, receipts, or franchise of said company, or any license be required by any State or Territory, the Postmaster-General may increase the rate on each telegram between offices in such State or Territory until the increased income realized by the company in such State or Territory equals the sum of money collected for such tax or license. Every postmaster shall, on the second Monday of each month, forward to the Postmaster-General a statement of the number of telegrams transmitted to his office during the next preceding month, and the stamped value of each telegram, and the number and amount of telegram-stamps sold at his office, and all money received for telegraphic service. The Postmaster-General shall cause monthly accounts to be prepared for said company of the amount of telegram-stamps sold, and of all other sums received for the transmission of telegrams, and of the number of telegrams received by the Department, and their stamped value, and after deducting five cents on each telegram transmitted, shall pay the remainder of such receipts to said company as full compensation for its services under said contract. In case any question shall arise between the Postmaster-General and said company under this act, it shall be referred to three arbitrators, to be appointed by the Attorney-

General of the United States, and their award, or that of a majority of them, shall be final and binding upon all parties affected by the decision.

SEC. 7. That Gardiner G. Hubbard, Franklin Haven, and Estes Howe, of Massachusetts; George K. Jewett and Richard D. Rice, of Maine; James W. Emery, of New Hampshire; Henry C. Murphy and Richard A. McCurdy, of New York; J. Wyman Jones, of New Jersey; Andrew Carnegie, David Brooks, and Joseph B. Baker, of Pennsylvania; Peter H. Watson, of Ohio; William Cumbach, of Indiana; Frank W. Palmer, and John F. Tracy, of Illinois; Russell Blakeley and J. A. Thacher, of Minnesota; A. J. Aiken, of Wisconsin; John N. Dewey, of Iowa; Robert Hawke, of Nebraska; J. W. Childs and M. V. Aldrich, of Michigan; Clinton B. Fisk, of Missouri; John M. Peck, of Arkansas; John Cockrem, of Louisiana; Charles O. Whitney, of Alabama; Alva Gage, of South Carolina; William B. Rodman, of North Carolina; George Oulton, of California; and Anthony Pollok, of Washington, District of Columbia, and their associates and successors, are hereby created a body politic and corporate, located in the city of Washington, for the performance of the postal-telegraph service under contract with the Postmaster-General, and on his behalf, according to the requirements of this act, by the name of "The Postal-Telegraph Company." The said corporation shall have perpetual succession; it may make contracts, sue and be sued in the courts of the United States and of the several States; it shall have a common seal; it may make all necessary by-laws not inconsistent with the provisions of this act; and purchase, lease, hold, and convey such real and personal property as may be required for the convenient transaction of its business and for the purposes of this act. The first three incorporators, or a majority of them, shall act as commissioners to receive subscriptions to the capital stock of said company; and due notice of the time and place of receiving the same shall be given for fourteen days in one daily newspaper published in each of the cities of Washington, Boston, New York, Philadelphia, Charleston, Raleigh, New Orleans, Saint Louis, Cincinnati, Chicago, San Francisco, Detroit, and Galveston; and each of the incorporators herein named shall be entitled to subscribe for such capital stock. And subscription-books shall be kept open in the city of Washington until ten thousand shares, of the par value of one hundred dollars each shall be subscribed and twenty per centum thereof paid; and whenever that amount shall have been subscribed and paid, it shall be the duty of said commissioners, a majority of whom shall constitute a quorum, to call the first meeting of said incorporators and such parties as shall have subscribed for such capital stock. Upon the organization of said company there shall be chosen not less than twelve nor more than twenty directors, to serve until the annual meeting. The Postmaster-General shall be ex-officio a director of the company. The annual meeting shall be holden in Washington on the third Tuesday of January. Thirty days' notice of all meetings shall be given in two daily newspapers published in Washington. The said company shall annually furnish to the Postmaster-General accurate accounts and statements of its operations, made up in such manner and with such details as he may from time to time require, sworn to by the president or the treasurer thereof.

SEC. 8. That the said company may purchase any lines of telegraph that are in operation in the United States at the date of the approval of this act, on such terms as may be agreed upon, but no such contract shall be valid until approved in writing by the Postmaster-General. And it is further provided that if any telegraph-company shall, within one year from the date of the approval of this act, offer to sell all or any portion of its corporate property to said "The Postal-Telegraph

Company," it shall purchase such property at a valuation to be fixed by five competent disinterested persons, two of whom shall be selected by said "The Postal-Telegraph Company," two by the telegraph-company proposing such sale, and one by the four so selected; and the sum of money so awarded by them shall be paid in cash, unless the parties shall agree to take stock in said "The Postal-Telegraph Company" in lieu thereof, on delivery of the deeds, or any other transfer of such property sufficient to convey a good and satisfactory title to the same. The said company may also construct all necessary lines for the transmission of telegrams under the provisions of this act, and, from time to time, increase its capital stock to an amount equal, at its par value, to the actual cost of lines and equipment so purchased and constructed.

SEC. 9. That the said company may, at its own expense, establish and maintain telegraph-offices for the reception, transmission, and delivery of telegrams, in addition to those established by the Postmaster-General as herein provided; but the Postmaster-General may, at any time, substitute postal-telegraph offices for any such office. Any postmaster may act as operator. Said company may make special contracts with railroad-companies relating to the telegraphic business on the line of such railroad, and also with persons, associations, and companies for the use of wires for the transmission of commercial, press, and other telegrams; but such contracts shall not interfere with or delay the prompt transmission of telegrams as is hereinbefore provided. Said company shall be subject to all the obligations, and entitled to all the privileges of the act of Congress approved July twenty-fourth, eighteen hundred and sixty-six, entitled "An act to aid in the construction of telegraph-lines, and to secure to the Government the use of the same for postal, military, and other purposes," excepting so far as the provisions thereof conflict with this act.

SEC. 10. That said "The Postal-Telegraph Company" is chartered on condition that it shall contract with the Postmaster-General for the transmission of correspondence by telegraph at the rates and in accordance with the provisions of this act; and if it shall unreasonably refuse or neglect to make such contract, then the franchise of said company, and all its rights and privileges, shall thereupon cease and be determined, and the Postmaster-General shall thereupon contract with any other responsible corporation who will agree to perform such service on the terms and conditions recited and contained in this act. Congress shall have the right at any time to purchase all the lines and property of said Postal-Telegraph Company, according to the provisions of the act of Congress approved July twenty-fourth, eighteen hundred and sixty-six, before referred to, entitled "An act to aid in the construction of telegraph-lines, and to secure to the Government the use of the same for postal, military, and other purposes."

SEC. 11. That Congress may at any time repeal, alter, or amend this act; and the Postmaster-General shall prescribe all rules and regulations necessary for the effectual working of a postal-telegraph system, and the execution of the provisions of this act, and not inconsistent with the same.

APPENDIX.

A comparison of the reduced rates of the Western Union Telegraph Company with those proposed by the postal telegraph gives the following results :

Distance.	Western Union Telegraph Co.		Postal-Telegraph Company.		Per cent. reduction.	
	Day.	Night.	Day.	Night.	Day.	Night.
Under 25 miles.....	\$0 25	\$0 25	\$0 30	\$0 30	.....	.....
Over 25 and under 50 miles	30	25	30	30	.....	.....
Over 50 and under 100 miles	40	25	30	30	25	.....
Over 100 and under 200 miles	50	25	30	30	40	.....
Over 200 and under 400 miles	75	37	50	30	33 $\frac{1}{3}$	20
Over 400 and under 600 miles	1 00	50	75	30	33 $\frac{1}{3}$	40
Over 600 and under 800 miles	1 25	62	80	30	36	50
Over 800 and under 1,000 miles.....	1 50	75 $\frac{1}{2}$	1 00	25	33 $\frac{1}{3}$	66 $\frac{1}{2}$
Over 1,000 miles, from \$1.50 to \$2.50, average.....	2 25	1 12	1 25	50	44	56
Over 2,000 miles	2 50	2 50	1 25	50	50	50

The average rate by the Western Union Telegraph Company is now about 62 cents, having been reduced since July 1, 1873. The average rate by the Postal-Telegraph Company is about 42 cents.

The Western Union Telegraph Company allows 10 free words for a telegram, and the Postal Telegraph Company 20 words, including address and signature, which will ordinarily give 15 free words.

Comparison by rates from New York to a few cities.

Stations.	Western Union.		Postal Tele-graph.		Per cent. reduction.	
	Day.	Night.	Day.	Night.	Day.	Night.
To Washington.....			\$0 30	\$0 30	.....	.....
To Chicago	\$1 00	\$0 50	80	30	20	40
To Cincinnati.....	1 00	50	50	30	50	40
To Saint Louis.....	1 50	75	1 00	30	33 $\frac{1}{3}$	60
To New Orleans	2 00	1 00	1 25	50	38	50
To Mobile	2 00	1 00	1 25	50	38	50
To Houghton, Mich.....	3 00	1 50	1 00	50	66	60
To San Francisco	2 50	2 50	1 25	50	50	80

Statistics of the business of the Western Union Telegraph Company.

Year.	Number of paid messages.	Gross receipts.	Expenses.	Net receipts.	Receipts, less press-reports.	Rate.	Mileage.		Number of offices.
							Line.	Wire.	
1867		\$6,568,925 00	\$3,944,005 00	\$2,624,919	\$5,738,628	.....		85,290	3,106
1868	5,733,394	7,264,852 00	4,443,924 00	2,820,928	6,337,105	\$1 10	50,760	97,594	3,331
1869	6,548,465	7,271,918 00	4,737,088 00	2,534,830	6,344,171	97	52,099	104,584	3,469
1870	7,859,028	7,323,430 00	4,970,685 00	2,352,745	6,395,683	83	54,109	112,191	3,990
1871	9,115,010	7,638,233 00	5,104,788 00	2,533,445	6,688,233	73.4	56,320	121,151	4,606
1872	11,784,296	8,457,095 00	5,666,863 00	2,790,232	.....	71	62,032	137,190	5,237
1873	13,362,832	9,333,018 51	6,575,055 82	2,757,962	.....	70	65,757	154,471	5,740

The total number of messages transmitted in 1873 was 14,456,832; including free messages, at the regular tolls, \$766,000, or 1,094,000.

The figures for 1872 and 1873 are taken from the annual reports of the company; the remainder from the report of the House Committee on Appropriations, made December 19, 1872. The messages for 1872 and 1873 include press-messages. The business, exclusive of press-messages, increased between 1868 and 1872, both inclusive, 100 per cent., while the expenses increased 47 per cent., the mileage of line 30 per cent., and of wire 60 per cent. The rates were reduced 40 per cent., which reduced the net receipts only \$63,966, while over \$5,000,000 were saved to the public in the year 1873 alone, being the difference between the rates actually paid and those which would have been paid under the tariff of 1868. In the last three years the rates were reduced 15 per cent., with an increase in the net profits of \$468,000. The capital stock of the company, June 30, 1873, was \$41,073,410, of which there was outstanding \$33,778,175; owned by the company, \$7,295,235. The debt of the company on that day was \$6,038,410. There were in the employ of the company at that time :

Superintendents	33
Managers and operators	5,514
Messengers.....	1,830
Clerks	661
Foremen of construction and repairmen	589
Mechanics in factories.....	116
Batterymen, 84; miscellaneous, 275.....	359
Total	<u>9,102</u>

EUROPEAN TELEGRAPHS.

Total number of inland and one-half of all other telegrams transmitted, according to the latest returns	52,411,000
Total number of inland telegrams	44,345,600
Total receipts	\$19,288,462
Receipts for inland telegrams.....	\$13,187,521
Total expenses.....	\$19,277,000

Average receipts, 36 cents per telegram; average receipts for inland telegrams, 29 cents.

POST-OFFICE TELEGRAPHS.

Statement of accounts from the commencement to March 31, 1875; the figures for the years ending March 31, 1874, and March 31, 1875, being estimated.

I.—CAPITAL ACCOUNT.

	Stock.	Cash.		Amount.
Amount raised by National Debt Commissioners as under—			Purchase-money of telegraph undertakings, consisting of cost of plant, household property, stores, &c., handed over to post-office, and the good-will of the undertakings.....	£6,788,996
Dec. 16, 1869, stock created	£4,000,000		Extensions, &c., carried out by the department, preliminary expenses, &c.	2,175,535
Jan. 13, 1870, stock created	3,000,000		Amount paid to redundant officers of late telegraph companies in respect of pensions, and amount required to capitalize future payments.....	285,469
June 18, 1870, stock created	300,000		Compensation to railway companies, (estimated)	788,000
June 16, 1871, stock created	288,757			
	7,588,757	£7,000,000		
Aug. 18, 1871, stock created	650,000			
Mar. 21, 1872, stock created	429,043			
	1,079,043	1,000,000		
Stock to be created, (estimated,) 1873-'74	1,354,334	1,250,000		
Stock to be created, (estimated,) 1874-'75	864,588	788,000		
	10,886,722	10,038,000		10,038,000

GENERAL POST-OFFICE, July, 1873.

II.—REVENUE ACCOUNT.

From date of transfer to March 31, 1875, (estimated for the last two years.)

	Amount.	Total.		Amount.	Total.
Expenditure for salaries, wages, rents, &c.—			Receipts in respect of messages, private wire rentals, &c.—		
Year ended Mar. 31, 1870..	£40,264		Year ended Mar. 31, 1870..	£100,761	
Year ended Mar. 31, 1871..	415,705		Year ended Mar. 31, 1871..	697,934	
Year ended Mar. 31, 1872..	543,204		Year ended Mar. 31, 1872..	751,611	
Year ended Mar. 31, 1873..	913,689		Year ended Mar. 31, 1873..	978,066	
Year ended Mar. 31, 1874, (estimated)	858,000		Year ended Mar. 31, 1874, (estimated)	1,220,000	
Year ended Mar. 31, 1875, (estimated)	943,800		Year ended Mar. 31, 1875, (estimated)	1,403,000	
		£3,714,662			£5,151,372
Balance		1,436,710			
		5,151,372			5,151,372

GENERAL POST-OFFICE, July, 1873.

III.—GENERAL BALANCE.

Dividends on stock created and to be created.	Amount.		Amount.
On £7,000,000 for 1 year to January 5, 1871..	£210,000	Balance of revenue account.....	£1,436,710
On £300,000 for $\frac{1}{2}$ year to January 5, 1871..	4,500		
On £7,300,000 for 1 year to January 5, 1872..	219,000		
On £288,757 for $\frac{1}{2}$ year to January 5, 1872..	4,331		
On £650,000 for $\frac{1}{2}$ year to January 5, 1872..	9,750		
On £429,043 for 1 year to January 5, 1873 }	260,034		
On £8,238,757 for 1 year to January 5, 1873 }	260,034		
On £8,667,800 for 1 year to January 5, 1874	20,315		
(Say) on £1,354,334 for $\frac{1}{2}$ year to April 5, 1874	65,008		
On £8,667,800 for $\frac{1}{2}$ year to April 5, 1874..	300,664		
On £10,022,134 for 1 year from April 5, 1875	16,210		
On £864,588 for (estimated) April 5, 1875..	66,864		
Balance			
Total	1,436,710		1,436,710

GENERAL POST-OFFICE, July, 1873.

IV.—Statement showing the cost of the plant and property handed over to the post-office by the principal late telegraph companies, and in addition thereto the value of the good-will included in the purchase-money of their undertakings.

Name of telegraph companies.	Plant, &c.	Household property and leases.	Stores.	Value of good-will.	Amount of purchase-money.
Electric and International	£1, 041, 435	£49, 100	£42, 087	£1, 806, 204	*£2, 938, 826
British and Irish Magnetic.....	742, 188	26, 147	11, 597	463, 604	1, 243, 536
United Kingdom Electric.....	344, 368	893	5, 692	211, 311	562, 264
London and Provincial.....	48, 810	.....	.....	11, 190	60, 000
Universal Private	121, 231	233	5, 272	57, 685	184, 421
Jersey and Guernsey	28, 053	.....	.....	29, 297	57, 350
Isle of Man.....	10, 328	.....	.....	5, 808	16, 136
Reuter's	123, 250	.....	.....	602, 750	726, 000
Totals	2, 459, 663	76, 373	64, 648	3, 187, 849	5, 788, 533

* The plant of the Electric Company cost them much more than the sum stated, as they were in the habit of charging capital outlay to revenue, to prevent the dividends exceeding the amount allowed by act of Parliament.

GENERAL POST-OFFICE, July, 1873.

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Comparative statement of the number of messages forwarded in the United Kingdom in each week of the financial years 1870-'71, 1872-'73, and 1873-'74, and showing also the number of complaints of errors, delays, &c., received from the public.

1870-'71.				1871-'72.				1872-'73.				1873-'74.							
Week ended 1870.	Total No. of mes- sages.	Total No. in 13 weeks.	No. of com- plaints.		Week ended 1871.	Total No. of mes- sages.	Total No. in 13 weeks.	No. of com- plaints.		Week ended 1872.	Total No. of mes- sages.	Total No. in 13 weeks.	No. of com- plaints.		Week ended 1873.	Total No. of mes- sages.	Total No. in 13 weeks.	No. of com- plaints.	
			Per week.	Per quar- ter.				Per week.	Per quar- ter.				Per week.	Per quar- ter.				Per week.	Per quar- ter.
Apr. 9	169,562		234		Apr. 8	186,448		218		Apr. 6	257,819		253		Apr. 5	326,563		235	
Apr. 16	157,807		175		Apr. 15	207,607		296		Apr. 13	279,205		335		Apr. 12	292,506		198	
Apr. 23	170,659		234		Apr. 22	215,299		327		Apr. 20	275,349		268		Apr. 19	311,323		255	
Apr. 30	172,746		190		Apr. 29	221,484		271		Apr. 27	270,840		279		Apr. 26	325,327		247	
May 7	175,864		210		May 6	211,685		258		May 4	276,493		298		May 3	327,890		315	
May 14	180,674		278		May 13	218,075		276		May 11	280,159		322		May 10	329,382		315	
May 21	173,040		237		May 20	216,626		212		May 18	279,559		323		May 17	337,038		301	
May 28	176,811		216		May 27	222,093		307		May 25	246,761		260		May 24	330,936		248	
June 4	191,443		269		June 3	202,049		288		June 1	288,400		277		May 31	340,241		271	
June 11	177,523		282		June 10	222,490		265		June 8	286,687		353		June 7	304,539		227	
June 18	200,294		301		June 17	225,198		319		June 15	298,957		279		June 14	339,772		235	
June 25	194,696		381		June 24	224,850		320		June 22	304,289		383		June 21	341,551		281	
July 2	185,520		355		July 1	229,894		298		June 29	304,841		366		June 28	348,338		279	
		2,326,639	3,362				2,803,798	3,655				3,649,359	3,996				4,255,406	3,407	
July 9	192,048		256		July 8	241,726		267		July 6	294,496		348		July 5	342,405		291	
July 16	214,419		368		July 15	246,153		335		July 13	308,746		330		July 12	351,252		248	
July 23	234,194		429		July 22	246,917		331		July 20	304,853		405		July 19	361,789		288	
July 30	215,448		461		July 29	253,262		317		July 27	312,085		421		July 26	368,828		263	
Aug. 6	205,302		386		Aug. 5	253,135		343		Aug. 3	330,590		390		Aug. 2	376,674		311	
Aug. 13	212,202		396		Aug. 12	251,898		308		Aug. 10	320,555		395		Aug. 9	369,451		314	
Aug. 20	194,580		400		Aug. 19	260,504		356		Aug. 17	329,478		358		Aug. 16	381,196		339	
Aug. 27	189,673		368		Aug. 26	258,280		381		Aug. 24	329,201		391		Aug. 23	365,484		302	
Sept. 3	189,322		279		Sept. 2	256,109		352		Aug. 31	320,920		356		Aug. 30	366,559		312	
Sept. 10	191,183		328		Sept. 9	261,203		368		Sept. 7	322,806		379		Sept. 6	361,572		296	
Sept. 17	196,710		288		Sept. 16	266,946		372		Sept. 14	327,202		451		Sept. 13	372,024		264	
Sept. 24	189,636		375		Sept. 23	256,456		358		Sept. 21	321,478		321		Sept. 20	358,507		293	
Oct. 1	196,266		371		Sept. 30	270,632		345		Sept. 28	314,220		269		Sept. 27	366,346		299	
		2,620,983	4,705				3,323,221	4,433				4,136,630	4,814				4,742,087	3,820	
Oct. 8	197,689		297		Oct. 7	273,299		313		Oct. 5	320,231		329		Oct. 4	360,093		338	
Oct. 15	202,389		373		Oct. 14	268,720		348		Oct. 12	319,995		275		Oct. 11	372,884		344	
Oct. 22	202,460		451		Oct. 21	256,377		342		Oct. 19	313,388		274		Oct. 18	360,788		248	
Oct. 29	202,554		372		Oct. 28	257,991		306		Oct. 26	316,166		276		Oct. 25	350,674		259	
Nov. 5	194,201		404		Nov. 4	238,259		287		Nov. 2	312,045		268		Nov. 1	335,859		229	
Nov. 12	186,557		321		Nov. 11	249,020		320		Nov. 9	311,075		236		Nov. 8	358,061		181	

[illegible]

ARGUMENT
ON THE
POSTAL-TELEGRAPH BILL
BEFORE THE
SENATE COMMITTEE ON POST-OFFICES AND POST-ROADS.

FIRST DAY.

JANUARY 15, 1874.

Mr. HUBBARD spoke as follows :

Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: The Constitution grants to Congress the right to establish "post-offices and post-roads." The object of this grant was the transmission of intelligence from one party to another at a distance. The means by which it was to be transmitted was necessarily left in the discretion of Congress. Originally the mail was transmitted by men on horse-back, next by stage-coach, then by steamboat and railroad, and now in every country but America by telegraph.

It has been said that the telegraph was not within the purview of the grant because its invention was subsequent to the adoption of the Constitution. The same objection might be made to transmitting the mails either by steamboat or railroad. But both Congress and the Supreme Court have settled this question by deciding that the provision of the Constitution in regard to the regulation of commerce among the States applies to commerce moved by railroads and steamboats.

Again, it has been said that a telegraphic message differs in its essence from a letter ; but a little consideration will show how slight the difference is. The first definition of a letter in Webster is, "a written or printed message ;" a telegram also is a written or printed message. The third definition of a letter is, "a communication made by visible characters from one person to another ;" a telegram "is a communication made by visible signals from one person to another." By the definition, then, a letter and a telegram are substantially the same thing, and perform the same office—the transmission of intelligence between parties at a distance.

Why is it that the only business excepting that which is purely governmental, devolved upon Congress is the transmission of intelligence? It is on account of the vital importance of the subject. The most important business of the telegraph and of the mails is the transmission of news. Every morning and every evening, as we take up our paper, the first and oftentimes the only part to which we turn our eyes is the telegraphic news ; next in importance is the transmission of

commercial news, which is of a semi-public character; third, private correspondence either social or business.

What are the respective rights and duties of Congress and the States on this subject? The articles of confederation gave to Congress "the sole and exclusive right and power of establishing and regulating post-offices from one State to another." They did not give sufficient power to Congress, and "in order to form a more perfect union," the Constitution was framed. The section which grants the power to establish post-offices and post-roads contains other provisions, all of which, that have come under discussion by the Supreme Court, have, with two exceptions, been held to give Congress sole and exclusive control over the subject-matter thereof. The powers thus granted are in their nature exclusively national: to coin money, make war establish post-offices and post-roads, to issue patents, to provide and maintain a navy, and others of a similar character. The only exception that the Supreme Court have made to the exclusive jurisdiction of Congress over the powers granted in this section is, in the clause regulating commerce between the States. They have decided that in mere local matters, as licensing coast-pilots, the building of bridges over small streams where the tide ebbs and flows, the States have jurisdiction until the United States shall have legislated on the subject, and also that States may pass insolvent laws effective within their own jurisdiction, but inoperative beyond, until Congress has enacted a bankrupt-law. In the case of the State of Nevada, it was held that a State could not impose a tax upon passengers from one State to another, even if there was no act of Congress forbidding it. It was decided in the Pennsylvania tax-case that the State could not levy a tax on freight passing through its territory to another State. The same principle applies to the transmission of inter-State correspondence, whether by mail or telegraph. The Constitution has committed the business to Congress, and the laws of any State which relate to the transmission of inter-State correspondence are unconstitutional and void. The only act that has been passed by Congress relating to correspondence by telegraph is the act of 1866, which provides that "any telegraph-company shall have the right to construct, maintain, and operate lines of telegraph through or over any portion of the public domain of the United States, over and along any military or post-roads which have been, or may hereafter be, declared such by act of Congress." That is the length and breadth of the law which regulates the telegraphic business of the country. I think it is a subject entitled to much consideration and reflection, whether the powers relating to post-offices and roads delegated to Congress are not exclusively in its control, and whether it can delegate them to any company.

Mr. SAULSBURY. In reference to this right to establish post-offices and post-roads, do you understand that to be an absolute power in Congress to lay out roads through the States for the purpose of having the mails carried over them, or whether the power is simply confined to the selection of such roads as may already have been established?

Mr. HUBBARD. That is a political question not raised by the bill before the committee, as no such authority is asked. Congress has the right to establish post-offices and post-roads; and having this right, it has the power to do everything necessary to make the grant effective; they have, therefore, the right to transport the mail between post-offices, and it necessarily follows that they may construct roads for that purpose if there is no other way. But it is probably impossible to find two

offices so situated that it would be necessary to construct a road between them for this purpose.

It seems to me there is no more power in Congress to authorize the Western Union to transmit inter-State telegraphic correspondence than to authorize it to coin money, declare war, or maintain a navy. All these powers are contained in the same section of the Constitution.

Mr. Morse originally applied to Congress for a grant of money to construct the first telegraphic line. It was obtained and a line constructed from here to Baltimore. The subject was subsequently referred to the Postmaster-General to consider the expediency of adopting the Telegraph as a part of the postal service. He reported that he was not satisfied that under any rate of postage that could be adopted its revenues could be made equal to its expenditures—that is, it must fail, and could not be used for the transmission of correspondence.

The importance of this subject induced our forefathers to give to Congress, and to Congress alone, jurisdiction over this subject. A consideration of the powers this corporation possesses will show what its importance is: First, its control over the press. There is in New York a double-headed monopoly formed of the Western Union Telegraph Company and the New York Associated Press, with its agents in Europe in every city of the United States, and in every country-town; wherever you find an operator, there is an agent of this monopoly. Hour by hour and day by day they gather up all the news of interest that transpires in their locality and transmit it to the headquarters in New York, where it is digested, collated, and again sent over the country. Every night it is received, and in the morning it is read in every town in the country.

There are no laws establishing the press-rates. This combination has, therefore, the right to charge whatever prices it pleases. It can raise and depress them. It can say to this paper, the price is so much; and to that one, you can have double the quantity at the same price; and to the next it can raise the price so high that it cannot afford to take it. This right of giving or withholding they have exercised more than once. This monopoly opposes the postal telegraph, and yet they say the press are not in favor of it. Aye, gentlemen, they hold the cord tightly round their throats, and then say the press do not oppose them. Here and there a paper has favored this reform, and here and there a paper has ceased to receive the telegraphic news. The avowed reason has never been that the paper favored the postal telegraph; but there have been these two facts—papers that have favored the postal telegraph have subsequently either lost their telegraphic news or been furnished with it at a price so high that they could not afford to pay for it. This associated press has its auxiliaries in every important city of the Union—Saint Louis, Cincinnati, Chicago, Saint Paul, everywhere there is an association into which no paper can be admitted without the consent of all the others. The Associated Press at New York and the Western Union Telegraph Company have each on contracts with the other associations, and in them it is provided that no other company shall be employed, and that they will not encourage or support any opposition or competing telegraph-company; and they are informed that this clause is a valuable consideration for the favorable terms of the contract.

Mr. HAMLIN. Can you furnish the committee with a copy of one of these contracts?

Mr. HUBBARD. I think I shall be able to.

Mr. ORTON. Would it not be courteous for the committee to ask me to furnish it? Mr. Hubbard has no right to one.

Mr. HAMLIN. I will ask you for one at the proper time.

Mr. HUBBARD. I have obtained several of these contracts from the parties executing them, who had the same right to furnish them to me that Mr. Orton has to give them to this committee, and more than one of these gentlemen have regretted that they were thus controlled by the telegraph-company, and that under this constant pressure they could not speak freely. I desire here to say of the president of the Western Union Telegraph Company that I do not believe he would use the power he wields for any improper purpose, and as long as he holds that position I do not believe there will be, with his knowledge, any use made of it which he thinks contrary to the public interests. So far as my knowledge extends, he has shown a higher regard for those interests, conjoined to those of his company, than I should have believed it possible for any man to have exhibited. But the stockholders of this corporation control their own officers as they control the press, and can make or unmake them as and when they please. While Mr. Orton continues in his position I do not have that fear of this corporation that I should otherwise have.

The Western Union Telegraph Company have, at their New York office, a commercial bureau, which receives the news from agents in London, Paris, Berlin, and Vienna. Each morning, as the clock strikes 12, cablegrams are received at this office with the morning's price of cotton in London, corn at Liverpool, and petroleum at the Hague. From New York the wires are connected with its offices in our large cities, and by the exclusive control which this department has over the wires its news has priority in transmission to their agents in every large city of the Union. They have the first knowledge of the price of corn at London, New York, Chicago, and at every other market. They are the first to hear of each fluctuation in the price of cotton at Liverpool and New Orleans. Their agents first know the price of gold. My friend [Mr. Orton] will say that it is impossible for him to interfere in this business without its being known to his subordinates, and through them to the public. But another party might not have the same honorable scruples which would prevent him from interfering, for his private advantage, with this news. The temptation is so strong that few would have the strength to resist it. His company brooks no competition in this department of their business. At Cincinnati there was a person who received quotations from New York, and sold it to his customers; but soon after the Western Union started its commercial bureau he found that its customers received their telegrams an hour or two earlier than his. His business fell off; and though he sued the company and recovered a verdict for \$3,000 damages for delaying his telegrams, he was ruined, and they now control all this business. Is not this power too vast to be controlled by any corporation?

Last is the private correspondence, which is increasing so rapidly that it is almost impossible for any clerk to inspect or tamper with it. Besides, every one can use a cipher, and thus have a sealed correspondence. A controlling amount of the stock of the Western Union Company is held by Mr. Vanderbilt and his associates. They substantially control the company, and this power over the press and the markets rests in one man.

Such centralization of power the world has never seen. We are all opposed to the centralization of power in the Executive, but can it be a serious question whether, if this power is to be exercised, it shall be

controlled by a company irresponsible to law, or be held by the servants of the people; that is, whether the people through their agent, the Postmaster-General, shall wield this power or an irresponsible individual or company?

Mr. FERRY. I would like to have you show why this same power might not be exercised under your plan, if you have the commercial business of the country to transact.

Mr. ORTON. Why would not Mr. Hubbard's proposed company have all the knowledge that he attributes to me, and all the power to use it improperly if they desired, that he alleges I possess without using it improperly, by the transfer of the telegraphic business from the Western Union Company under Mr. Orton to the Postal Telegraph Company under Mr. Hubbard?

Mr. HUBBARD. These are very proper questions to ask, and we will try to answer them. I was, however, about to submit that we all know the power of the press in all public affairs, and that it is increasing daily. We saw it a year or two ago in New York when it overturned the Tweed dynasty. All felt it last winter in the Credit Mobilier investigations, and we have seen and known something of it the last month in the choice of a Chief Justice of the Supreme Court.

Think you, gentlemen, the press could exercise influence in curbing the power of the Western Union Company when it controls them?

But, gentlemen, is it necessary that this power should be centralized either in the hands of a Postmaster-General or those of a company?

Mr. MERRIMON. Could that matter be regulated by statutes and penalties?

Mr. HUBBARD. It is so provided in the bill before the committee.

Mr. ORTON. Will you not answer the gentleman's question as to the ability to provide, by a penalty, for securing the transmission of messages in their order, first come first served?

Mr. HUBBARD. You know more about that, practically, than I do. I would rather you would answer it.

The question now is, whether this bill, with whatever amendments the committee think necessary, will not take away the power which it exercises over the press and markets. The bill provides that every one shall have the right to use the telegraph; that there shall be no priority. It establishes the rates for the press, and secures to them the right to use the telegraph.

The rates can neither be raised nor lowered, but must be uniform and equal. New associations will have equal rights with old ones, and this provision takes away all restrictions on the use of the telegraph by the press. So in regard to the commercial bureau. The Postal Telegraph Company will have no right to carry on a commercial news bureau. That must pass either into the hands of associations on a par with each other, or, the rates being greatly reduced, two or three merchants could form an association.

It seems to me that, by the subdivision of power and duties under the provisions of this bill, the danger from centralization which now exists, and which would arise under the plan of the Postmaster-General, is entirely obviated.

Mr. MERRIMON. I desire to ask what would be the effect upon the patronage of the Executive and the political party that might administer the Government if this bill should pass?

Mr. HUBBARD. I shall expect to show that it will not sensibly affect the patronage of the Government, or increase the number of office-holders,

or its power. It is a point of great importance, and should be clearly understood.

Next, as to the rates of telegraphing. In England, which more closely resembles our country than any other, there is a uniform rate of 25 cents. For this sum you can send a message six hundred miles. Here it would cost you a dollar. Here you can send ten words; there, twenty.

Mr. ORTON. Do you mean to leave the impression upon the minds of this committee that 25 cents of our paper-money is the equivalent of an English shilling in respect to purchasing-power here and there.

Mr. HUBBARD. I do not expect to instruct the committee upon the value of an English shilling.

Mr. ORTON. Is it not material to this case; indeed, very material?

Mr. HUBBARD. Perhaps it is.

Mr. MERRIMON. A dollar is paid here in our currency for ten words and 25 cents in coin in England for twenty words?

Mr. HUBBARD. You can send there six hundred miles for 25 cents, and here it costs a dollar.

Mr. ORTON. To send a message half a mile would cost the same.

Mr. HUBBARD. To send half a mile there would cost 25 cents, and here would cost the same.

Mr. ORTON. The highest city rate here is 20 cents.

Mr. FERRY. How do the rates in other countries compare with those in the United States?

Mr. HUBBARD. The rates in France and Germany vary with the distance, and are considerably lower than here.

Mr. ORTON. Will you allow me to say in this connection that the average rate for a ten-word message in the United States to-day is 50 cents. The revenue of the Western Union Company at this time would be precisely the same if we received an average rate of 50 cents a message, and sent the same number of messages that we now send.

I want to put this statement in here in connection with the statement you made about a dollar being charged in the United States for what in Great Britain costs only a shilling. It is true their uniform rate is a shilling in coin, and it is equally true that the average rate in the United States is but 50 cents in currency, while the average distance over which messages are sent is two or three times greater in the United States than in Great Britain.

Mr. PRESCOTT. The average rate in England is about 29 cents. The minimum rate is one shilling.

Mr. FERRY. Twenty-five cents is said to be the minimum in Great Britain. I would like to know where the bound is, how wide it diverges under the Western Union beyond the 25 cents; have you that information?

Mr. HUBBARD. Yes, sir.

Mr. ORTON. What is the rate from Calais to Dover?

Mr. HUBBARD. I do not remember. The average distance telegrams are sent in Great Britain is not far from one hundred and fifty miles—about the distance from London to Manchester. For the same distance here it would be 50 cents; that is, for corresponding distances, the rates are twice as high here as in England, and yet it costs us less to do the work.

Mr. MERRIMON. Measured by the same standard of money?

Mr. HUBBARD. The difference in the value of 25 cents in coin or currency is so slight that I thought it hardly worth while to consider it. In an appendix a letter of Mr. Orton to the Postmaster-General, it is said that the working-force in New York does nearly four times as much

work in proportion to their number as the working-force in London, while the wages in New York are only about three times as high, so that the difference in expense is as three to four in favor of America; that is, they charge twice as much, while labor is cheaper here. Wages are higher, but our operatives do more work, and our instruments are better.

Mr. Orton says his average rate is 50 cents. Now I want him to give to the committee his figures. All we know is that, according to the annual report, published July last, the average amount paid by the public for messages was about 67 cents.

Mr. ORTON. That you may not waste your time or that of the committee, I have the figures, and will give them to you and the committee. For the last five months they appear as follows, (this is not the rate for ten-word messages, but the average rate for all messages:) The average receipts of the Western Union Company for cable messages, embracing all press-messages at full rates and all Government messages, including those transmitted during the negotiation with Spain, amounted to \$1.95 per message; press and commercial-news messages in the United States, 65½ cents; all other messages, 52¼ cents. Now, then, if all the business had been done on a uniform tariff of 50 cents for ten words, it would have yielded substantially the gross receipts of our company during that time.

Mr. MERRIMON. What do you mean by an average message?

Mr. ORTON. The cost of the average message is found by dividing the total receipts by the number of messages sent.

Mr. MERRIMON. What is meant by commercial-news messages?

Mr. ORTON. Stock and market reports. Press-messages are higher than ordinary messages for the reason that they are generally sent to a great many papers.

Mr. HUBBARD. When I shall have had the pleasure of analyzing Mr. Orton's statement I can speak further on it. If he has got his average down to 52 cents, I am exceedingly happy.

Mr. ORTON. There is exceedingly little left for you to do.

Mr. HUBBARD. It only shows that he is coming more rapidly to my views than I had supposed. For several years I have insisted that to make money he must reduce his rates; that it was impossible with rates of six, eight, and nine dollars a message, [Mr. ORTON. And ten,] to make money; but whatever his rates are, we can, by the saving of expenses effected by the union of the two services, keep one-third lower; the lower the better it will be for the people.

But, gentlemen, it is impossible for the rates to be as low under corporate as under a postal system, nor can further reductions be expected, since only one or two competitors remain; the Western Union Company tell you that soon there will be no competition whatever; that all the rival lines are losing money and must fail; and that they have done with reducing rates.

These two statements go hand in hand: In the future, no further reduction in rates, and complete monopoly.

Mr. DORSEY. Have the rates of the Western Union Company been reduced to points where they are in competition with the Atlantic and Pacific and other lines?

Mr. HUBBARD. They were reduced to Cincinnati and other western cities at first, and an arrangement was subsequently made by which the rates were raised again. Recently the rates to Cincinnati were 60 cents.

Mr. ORTON. Do you consider that a fair answer to that question?

Mr. HUBBARD. I certainly do.

Mr. ORTON. A part of it is correct, and a part is not; and the former is so stated as to convey a wrong impression. The rate from New York to Cincinnati was about \$2 at the time the Pacific and Atlantic opened lines there, which was four or five years ago. It was reduced early in that competition to \$1.25, and then to \$1. It stood at that rate for some time till evidence was submitted to me that our competitors, while professing to maintain the uniform rate of a dollar from New York to Cincinnati, were soliciting business from our customers under a stipulation to give them a private rebate of 33½ per cent. at the end of the month. We give no rebates except as part consideration of services rendered us, as by transportation companies. We have no private rates with any person in the United States whereby he gets better terms than any other person. We were, therefore, constrained to meet that. I then said we would make the rate so that it would not admit of possible rebates. It was put at 60 cents. It was continued, I think, a year. It is now about two years since, by an agreement between the managers of that company and the Western Union, the rate was restored to \$1. Now, the real answer to the question is to be made, and that is what I meant when I said the impression left upon the committee was an unfair one. There are no facts within my knowledge concerning the telegraphic business of the United States within the last seven years that I am not willing shall be fully and fairly laid before this committee. I only ask that all the facts shall thus be presented to the committee before its judgment is made up.

On the 1st day of July a uniform system of telegraphic rates was established throughout the United States east of the Rocky Mountains, regardless of the question of competition at one place and no competition at another; but it was upon a scale that competition had established between the principal cities. Competition has existed for several years between Boston and New York; thence west to Pittsburg, Cincinnati, Saint Louis, Chicago, Memphis, New Orleans, clear through to San Francisco, and as far north as Saint Paul. The rates that competition had fixed between these cities were made the basis of a schedule by air-line distances, not by the route messages must necessarily go. These rates were put in operation the 1st of July last, and resulted, throughout a considerable section of country, in a reduction of from 33½ to 40 per cent.; so that the statement, purporting to have been made by this committee, that the rates of the Western Union Company were higher in the western section than in the eastern, and higher in the southern than in the western, although true at the time it was made, has not been true since the 1st of July last. I have before me the tabulated data of five months' operations under this uniform system of tariff, and I close this statement of the case here by simply saying now that the average cost for a message in the United States to-day is less than the average cost of messages in Europe. While it is true that you can send a message anywhere in England for a shilling, the tariff from Dover to Calais is 80 cents. It is true also that you can send a message from one part of France to another for a franc and a half; but it will cost three francs to send it into a neighboring country. There are three rates in the European system. In this there is but one. The rates in Europe for the transmission of messages between one country and another are from two to twenty times as much as for sending them between stations in the same country, and there is a third rate for messages which simply pass through a country to and from neighboring States, and which involve no labor or expense to the country through

which they pass, as if New Jersey should impose a tax of 25 cents upon every message passing from New York to Philadelphia. If it could sustain such a tax it could abundantly afford to send local messages for 10 cents.

Mr. DORSEY. If I send a cablegram from here to London, is the rate on that the same from here to New York as on a dispatch from here to New York?

Mr. ORTON. No, sir. There are about nine thousand telegraph-stations in the United States and Canada. There are nearly six thousand Western Union stations. It is impracticable to provide all the telegraph-stations throughout the world with the rates to every office in this country. The United States are divided into sections, and the rate, which is per word, is made for each of these sections. The rate from here to New York on cable-messages is 3 cents per word, whether it contain one or more, while for ordinary messages it is 40 cents for the first ten, and 3 cents per word for all over ten.

Mr. DORSEY. Those 3 cents are in gold.

Mr. ORTON. Yes, sir. It would hardly be worth while for us to take a few cents in gold and a few cents in currency on cable messages especially as we have to keep the account separately. The rate is 3 cents a word for every word in the message. For ordinary-messages, sent on the lines of the Western Union Company you pay for ten words whether you send ten or only five; and in England you pay for twenty whether you send twenty or one. But in the cablegrams you pay only for the words actually sent, so that if the message is of five words you pay but 15 cents. In order to simplify the business it is necessary to simplify these rules and conditions, and if we were to apply the ten-word rate to cable-messages having three, four, and six words, while it would bring us just about the same amount of money, it would cost a portion of the cable-customers of the company a good deal more money.

Mr. HUBBARD. If a message consists of fifteen words—ten words body, three of address, and two of signature, making fifteen in all—if it is a cablegram, the rate is 45 cents in gold, whereas it would be only 40 cents in currency to New York?

Mr. DORSEY. And those 5 cents are additional?

Mr. ORTON. O, no. The rate for cable-messages is computed as follows: From New York City, and all places in New England, New Brunswick, and Nova Scotia to Great Britain and Ireland the tariff is \$1 for each word. From the District of Columbia to Great Britain the tariff is \$1.03 per word. Many messages are sent containing only three words, and some with only two.

MR DORSEY. I do not understand how a message could be sent in two words?

Mr. ORTON. I will explain how it can be done. Suppose an agent is to be sent to London to negotiate bonds, or to attend to any other business the general success of which he wishes to communicate to his principals. He goes to the telegraph-office in this city, or New York, or at whatever point he wishes to send, and registers the name and address of his firm under the word "Bob," "John," or any other word he chooses, with directions that any cable-message coming with that address shall be sent to his firm. It is arranged between the firm and the agent that if everything goes on favorably only the word "Bob, New York," or "John, Washington," shall be sent. It is obvious that any information previously agreed upon could be conveyed in this manner. Cable-messages are usually very short. Some of our most important offices average only six words for each cable-message for months together. Three-

word messages are quite common, and there is a considerable number every day of four and five words. Now, we have the same expense in a message of three, four, or five words in the clerical work, stationery, delivery, &c., as for a longer message.

Mr. MERRIMON. The tariff is higher for cipher-messages than for ordinary messages, is it not?

Mr. ORTON. Cipher-messages, composed of disjointed sentences or words rendering the meaning unintelligible, are charged only the ordinary rates; but cipher-messages, consisting of letters, grouped or otherwise, not forming any known or dictionary words, or of numerals, are counted thus: All the letters, figures, characters, and signs employed in the cipher-text are added together and divided by five to obtain the number of words. To the number of words thus obtained the address, signature, and any ordinary words contained in the message are added. The tolls upon these messages are one and one-half the ordinary rates. They are much more difficult to transmit than ordinary messages or cipher-messages composed of ordinary words, and are charged more necessarily.

Mr. HUBBARD. It is not now my intention to discuss the question of European rates. I shall confine my comparison of rates to the United States and England, because they are similarly situated.

For the same work the rates are twice as high here as there. I was about to say that, under the present system, the rates are necessarily higher than they would be under the postal telegraph. Rates must be high enough to pay all operating expenses and a fair return on the capital. Questions have arisen at different times as to what was the actual cash investment of the Western Union Telegraph Company. The Western Union was incorporated about twenty years ago by three or four gentlemen, each of whom put in a few thousand dollars, and have drawn out more than as many hundred thousands—some nearly as many millions. This may look a little extravagant, but it will not when you know the stock and cash dividends they have received. The Western Union Telegraph Company never divided more than 414 per cent. at once, nor over \$10,000,000 in amount at one time. The dividends averaged for several years about 100 per cent. a year. When I have referred to those dividends as increasing the cost of messages, I was met with the remark, "We have changed all that. We shall not declare any more stock dividends. The stockholders have passed by-laws prohibiting the increase of the stock." But there appeared lately a memorial in the New York papers, which has some bearing on this point, and which I desire to read:

MEMORIAL OF THE STOCKHOLDERS OF THE WESTERN UNION TELEGRAPH COMPANY.

To Wm. Orton, Commodore Vanderbilt, and others, executive committee of said company:

The undersigned, holders of stock in said company, many of us as permanent investors, beg respectfully to state: That the surplus of said company, as appears by President Orton's annual report, of June 30, 1873, (including \$7,285,200 of the stock of the company held as an asset,) amounts to upward of \$16,000,000; that this surplus has been increased by the net earnings since June; and that at the present time it amounts to fully 50 per cent. on the outstanding stock of the \$33,778,175. And we further state that the whole of this large surplus has arisen from the net earnings of the company, under the implied assurance that at the proper time, in some form, it should be divided among the stockholders.

The undersigned believe the time has now arrived when it is safe to make this division; and understanding the subject has been referred to the executive committee, and is now under advisement by them, we beg leave to suggest the following as the most acceptable form for such distribution, viz: to reduce the outstanding stock, which, as heretofore stated, now amounts to \$33,778,175 to \$30,000,000, by the purchase of the requisite amount of stock

in the market, and to represent the aforesaid surplus by the issue (for private distribution among the stockholders) of \$15,000,000 of 7 per cent. bonds, interest payable quarterly, with a moderate provision for a sinking-fund, for their gradual retirement.

We fully believe the present condition and future prospects of the company fully justify this dividend, and that the payment of the interest on these bonds will not interfere with the regular cash dividends to the stockholders, to which policy, we understand, commencing from January 1, your board are already committed. We believe the form of dividend we have suggested would be the most acceptable to the shareholders, and, therefore, earnestly request that this memorial may receive early and favorable consideration at your hands.

“The memorial to the executive committee of the Western Union Telegraph Company has received numerous signatures of prominent stockholders. One of the prominent leaders in the movement of the division of the surplus among the stockholders told a Tribune reporter that the memorial would be sent to every stockholder in the United States, and that it would probably go before the executive committee bearing names representing an overwhelming majority. A prominent Wall-street operator yesterday refused to sell February calls on Western Union at 90.”

“The memorial to the Western Union Telegraph Company, calling for the division of the stock on hand, seems likely to be taken up by the entire street.” From the New York Tribune.

Committee adjourned.

SECOND DAY.

JANUARY 16, 1874.

Mr. HUBBARD. Just before the adjournment I stated that although the Western Union Telegraph Company had made large reductions in their rates, they had decided to make no further reductions. The authority for that statement is a letter from Mr. Orton, published in the New York Herald October 23, 1873, which says, “The Herald is probably correct in assuming that further reductions will not be made by the companies now doing the business for some time to come.”

If, then, further reductions are to be made, it must be in connection with the Post-Office Department. We will show how these reductions can be made. I stated that the telegraph-companies could not perform the business as cheaply as it could be done under the bill before the committee. They are under no restraint from increasing their capital by the issue of further dividends of bonds and fictitious stock, while the postal telegraph cannot issue any stock unless it is fully paid up in cash. The Post-Office Department are building a post-office in New York at a cost of several millions of dollars, and on the opposite side of Broadway, the telegraph-company is erecting a telegraph-office at a cost of \$2,000,000; if the telegraph was united with the post-office, one building would suffice for both. At Boston, Philadelphia, Chicago, Saint Louis, Cincinnati, and at other large cities, post-offices are also being erected, and they can be adopted to the telegraph with little additional expense and save a very large amount to the community.

By the prepayment of all messages by stamps a large clerical and book-keeping force will be dispensed with, and the service expedited, for much time is consumed in numbering and registering messages both at the receiving and delivery offices, while always one and in many cases several letter-press copies of a message are required. There will be as great reform in the manner of handling telegrams, as there was with letters when the rates varied, and prepayment was optional, and every

etter had its own way-bill made out and forwarded with the letter. If that system was in operation at present you could have neither clerks nor time enough in which to do the business. Various other expenses will be reduced by the union, amounting in all to 15 or 20 per cent.

The average rate of the Western Union Telegraph Company is about 60 cents. Mr. Orton has furnished me with a statement of the number of telegrams transmitted during the last five months and the receipts therefor. Dividing the telegrams by the receipts, the average is $55\frac{1}{8}$ cents. This includes free messages, which are about 8 per cent. of the whole number. Making the necessary deduction for these, the average rate is a little over 60 cents.

The rates, under the very able and skillful management of Mr. Orton, have been reduced to a greater extent than they have been during the same period in any other country; and yet, great as it is, they have not been of any sensible benefit to the public or direct pecuniary advantage to the company. Their rates, in 1868, were arbitrary, irregular, and without any system. A single instance will be sufficient to illustrate this point.

The rates from here to Waltham were \$1.75; to Boston, ten miles further, 55 cents; now they are alike. This is not an exaggerated case. Until the 1st of July last the rates from New York to Chicago were \$1; from Chicago to neighboring places 40 cents; from New York to the same places, \$2. The local rates a year ago were higher in the West than in the East, higher South than West; now they are alike. The adoption of regular and uniform rates were absolutely necessary, but they have not increased the business, while they have reduced the receipts.

There are no more messages sent from Washington to Waltham, nor to these places near Chicago than formerly.

They have made very great reduction in the rates to Oregon, from \$9, and to California from \$5, to \$2.50. But the whole business to the Pacific slope does not probably amount to more than 3 per cent.

The growth of the telegraph business has been no more rapid than the increase in tonnage on the Pennsylvania Central, the Boston and Albany, the Michigan Central, or many of the other leading railroads. These reductions have not probably affected more than 25 or 30 per cent. of the business; the rates on the remainder have not been reduced. If they had been reduced in the same ratio, the business, instead of doubling in five or six years, would be three or four times as great as it is. They would have had just as much business to-day at the old rates, provided there had been no more competition. They have suffered a great loss by the reduction, but the people have received no corresponding benefit.

Now, what are the present and the proposed rates? The rates under twenty-five miles are 25 cents; over twenty-five miles and under fifty, 30 cents; over fifty and under one hundred, 40 cents.

Mr. MERRIMON. What is the reason for the different rates between day and night?

Mr. HUBBARD. The wires, which are occupied all day, are idle during the night; if they can be utilized it will increase the profits without proportionately increasing the expenses; by doubling the business the profits are doubled.

Mr. ORTON. Less the cost of doing the additional business.

Mr. HUBBARD. If the profits are \$2,800,000 on 14,500,000 messages, and the business is doubled on the same "plant," the profits will be \$5,600,000.

Mr. FERRY. It seems to me that if you double the amount of your

business when the profit is 20 cents per message on your "plant," the increased amount would be all profit except the extra expense.

Mr. HUBBARD. You are correct.

Mr. DORSEY. Since the establishment of the half-rate night-messages, has there been any large increase of the aggregate number of messages? Have the people endeavored to send messages because they could get a half rate?

Mr. HUBBARD. I should say there had been a large increase. Mr. Orton and myself will probably not agree on that point.

Mr. ORTON. It is difficult to tell, Mr. Chairman, what causes produce the steady annual growth of the volume of telegraphic business.

I should state the causes which produce an increase in the telegraphic business in the following order: first, adequate facilities, efficiently worked. If I could insure to the business-men of our chief cities the transmission of a message within five minutes of its delivery between New York and Chicago, New Orleans, Cincinnati, Memphis, Charleston, Boston, Saint Louis, every day, at three times the present charges, I believe we should have, in a short time, as many messages as we have to-day at one-third those rates. That is my opinion. The telegraph is a provision for emergencies. If the emergency is sufficient to induce risking a dollar on a message to Chicago in a transaction involving thousands of dollars, taking the chances of accomplishing the result desired, then I assume that, if delivery could be guaranteed within a brief time, twice or three times the regular charge would be paid without hesitation.

Second. I should place the rates next. There is no doubt that low rates do stimulate an increase in the volume of business. For more than four years a provision has existed for sending messages at half-rates, deliverable on the following morning, without more inconvenience to the customer than in the case of full-rate messages. Notwithstanding this system has been in operation four years, less than 12 per cent. of the messages sent by the Western Union Company are sent at half-rates. In that simple statement is involved one of the most important facts; one of the fundamental laws which underlie the development of the telegraphic business. The telegraph is for the use of wide-awake people while they are awake. It relates to the transactions of the hour, to the business going on among business-men during business-hours. If we were to reduce the rates to one-quarter the present charge it would undoubtedly develop an increased volume of business, but I apprehend the largest percentage of that increase would be a class of business that is not now done at all. The pressure upon our wires in the day-time is not diminished by the business which is withdrawn to go at half-rates. For every message that is withdrawn from the circuit, say between New York and New Orleans during the day, another message takes its place at full rates.

Mr. HAMLIN. The night-messages, you say, constitute 11 or 12 per cent?

Mr. ORTON. Yes, sir.

Mr. HAMLIN. Do your wires afford sufficient facility for you to transact that business during the day, that 11 or 12 per cent., if called upon now to do it?

Mr. ORTON. They would undoubtedly be crowded; we could not do it as promptly, but we could do it. Still, our wires are substantially idle from 1 o'clock at night to 7 o'clock in the morning. For instance, a night-message is handed in at a small country-town in Maine that connects directly with Portland. The office in that small town in Maine

does not keep open at night. The requirement is, however, that it shall not close till it has forwarded to the repeating-station the night-messages it has accumulated. The message will then come into Portland at half past 7, but Portland has all night in which to forward it. If destined to Chicago, it will go through any time during the night. If destined for a country-village beyond Chicago, then the requirement is that it shall be forwarded from Chicago the first thing in the morning.

Mr. MERRIMON. What would be the additional cost of putting on new wires? Suppose the volume is increased as you suggest during the day, could you not supply the want of new wires?

Mr. ORTON. Yes, sir; we can supply the want of new wires, but when we have put up a new wire to-day we have only supplied the want of to-day, and in six months another wire is demanded. Thus, we soon reach the limit of the capacity of the poles to bear wires. Then we are confronted with this state of things, either to take down the line, poles, and wires, and build larger, or to build another line of poles. We are constantly doing both; we are adding wires on the trunk-lines all the time.

Within the last two years we have brought to a high state of perfection a new apparatus by which we work both ways on the same wire at the same time, thus doubling its capacity. The provision of increased facilities has fully kept pace with the growth of the business, and I think Mr. Hubbard will admit that it is possible for us to do, and that we are now doing, a volume of business fully three times what we were doing six years ago, and with greater average promptness now than then.

Mr. MERRIMON. How many wires will the ordinary post sustain?

Mr. ORTON. That depends entirely on the length and size of the post.

Mr. MERRIMON. I mean the ordinary pole. They are very similar.

Mr. ORTON. A pole 25 feet long should not be called upon to bear more than seven wires.

Mr. MERRIMON. How would iron posts do?

Mr. ORTON. They would undoubtedly do, but they are more expensive than wood, and there are other difficulties. Iron is a great conductor of electricity. The insulation must be more perfect between an iron post and the wire than in the case of wooden posts, otherwise the iron post would prove an obstruction.

Mr. DORSEY. Are any of your great through-lines worked up to the full capacity during the day?

Mr. ORTON. Yes, sir; all of them. The east and west lines, those which connect Boston, New York, Philadelphia, Baltimore, and Washington with Chicago, Milwaukee, Saint Paul, Buffalo, Detroit, Saint Louis, Cincinnati, Louisville, and New Orleans, are fully occupied during the business-hours of the day.

Mr. DORSEY. Can you send messages on one wire both ways at the same time?

Mr. ORTON. Yes, sir; at full speed. We have about one hundred and fifty sets of duplex apparatus now at work.

Mr. HUBBARD. Mr. Orton says that, so far as a large proportion of his business is concerned, if the rate should be raised threefold the business would not be decreased; that is only emergent business goes over his wires. I have no doubt it is so. He does not reach the people; they would use the wires, but cannot on account of the price. Abroad, where the rates are low, the people use the telegraph as they use the mail. Here, with high rates, they cannot afford it. In Switzerland and

Belgium, where the rate is 10 cents, half of the telegrams are on "social business." The same proportion might not be sent in this country, but it would be very much larger than it is if the rates were within the reach of the people. Mr. Orton says there is but a small amount of business at half-rates. Twelve per cent. appears to be a small amount, but not if it is considered that the entire business on the long routes, which is the principal business that enjoys the benefit of the half-rates, is about 25 per cent. of the whole. One-half of this is half-rate, and is not emergent business, showing that at reduced rates a large business would be created. A portion of the expenses of the telegraphic business is constant, bearing no relation to the amount of business, such as repairs of line, interest, rents, taxes, a considerable proportion of the office-expenses, miscellaneous expenses, amounting to about 34 cents on each telegram; therefore, if you double your business you reduce the proportionate expenses of these items one-half, or to 17 cents, and the rate can be reduced by an equal amount without reducing the net profits. There are also other expenses which are reduced as the business increases, as a portion of the salaries of the operators, messengers, and clerks, amounting to about 7 cents on each telegram. The statistics of the Western Union Telegraph Company corroborate these statements; each telegram it sent in 1868 cost the company 77 cents, and in 1873, 54 cents, a reduction of 23 cents on each, the business being rather more than double. An analysis of the expenditures of foreign telegraphs shows that if the business is increased 100 per cent. the expenses are increased about 40 per cent.; and, therefore, if business is increased 100 per cent. on the same plant, the rates can be reduced one-third without reducing the profits at all.

Mr. MERRIMON. You and Mr. Orton agree that the charges in Europe are much less than here?

Mr. HUBBARD. Mr. Orton thinks they are about the same.

Mr. MERRIMON. What is the comparative volume?

Mr. HUBBARD. I will furnish some statistics upon this point at a subsequent hearing.

Mr. MERRIMON. You said a while ago that if telegraphing was very cheap, the people would use it, and that the people in Switzerland used it largely. Now, I want to know what difference the low rates make in the volume.

Mr. HARRINGTON. Having been a resident of Switzerland, and being familiar with this subject, perhaps I may be allowed a few words. The rates in Switzerland were originally 2½ francs; it was reduced first to a franc, then to half a franc, or 10 cents. They debated a long time whether this rate would support the telegraph. Much to their surprise they found that when they reduced it to 10 cents the number of messages was a fraction more than double the first day, and the receipts were a little more than they were when the rates were higher.

Mr. PRESCOTT. That was only on the internal business.

Mr. HARRINGTON. The assertion has been frequently made that the rate of 10 cents pays in Switzerland. When you see the aggregate cost of the telegraph and the aggregate receipts—the receipts being a little larger than the expenditures—and then adopt the general idea that 10 cents is the rate, the conclusion is that those 10 cents pay the bills. There is, however, an international rate, 24 cents, and the returns show that there is 40 per cent. lost on the 10-cent rate. There stands a little bit of a place, no larger than Connecticut; a message that comes from France and goes through Switzerland costs Switzerland scarcely a farthing, but she gets 24 cents.

Mr. PRESCOTT. All the business between France and Germany passes through Switzerland, and the tax on that helps to pay the expenses of Switzerland. This enables them to send local messages for 10 cents.

Mr. ORTON. Let me call attention to the tables in the Postmaster-General's report relating to Switzerland. These tables purport to be furnished by Mr. L. Curchord, who is director of the international bureau and editor of the Journal télégraphique.

In nearly all the tables relating to other countries the international and transit messages are separated. In this it happens that they are given together. It is not material, but I desire to call attention to the fact that in Switzerland there were transmitted about a million and a half of interior messages in the year 1872, and about a half a million of international and transit messages. An international message "received" counts the same as an international message "sent." By this it appears that it was the profit from the higher charge on half a million international and transit messages that Switzerland did not handle at all, or only at one end of the circuit, that made up the loss on a million and a half of messages that Switzerland sent between stations in her own territory. The loss of Switzerland that year was a hundred thousand francs. In this connection permit me to say that the telegraphs of Europe, including Great Britain, are running their governments in debt at the rate of several million dollars a year.

Mr. HUBBARD. I had not proposed to make a comparison between the cost of telegraphing in Europe and this country, because there is slight analogy between the two. We are one people, with similar customs and institutions. In Europe there are different races, more languages and dialects; there is very little intercourse between a Greek and a Russian, or of either with the German, or between the different races that live in Austria. There is less telegraphic intercourse between Spain and all the other countries of Europe than between the United States and England by cable, propably less than there is between Washington and New York. I referred to the rates in Switzerland and Belgium to show that where the rates were low the people used the telegraph, as they used the mail, for social as much as for business purposes.

A comparison of the reduced rates of the Western Union Telegraph Company with those proposed by the postal telegraph gives the following results:

	Western Union Telegraph Company.		Postal Telegraph Company.		Per cent. reduction.	
	Day.	Night.	Day.	Night.	Day.	Night.
Under 25 miles	\$0 25	\$0 25	\$0 30	\$0 30	.....	.....
Over 25 and under 50 miles.....	30	25	30	30	.....	.....
Over 50 and under 100 miles	40	25	30	30	25	0
Over 100 and under 200 miles.....	50	25	30	30	40	0
Over 200 and under 400 miles.....	75	37	50	30	33½	20
Over 400 and under 600 miles.....	1 00	50	75	30	33½	40
Over 600 and under 800 miles.....	1 25	62	80	30	36	50
Over 800 and under 1,000 miles....	1 50	75½	1 00	25	33½	66½
Over 1,000	2 25	1 12	1 25	50	44	56
Over 2,000	2 50	2 50	1 25	50	50	50

Comparison by rates from New York to a few cities:

	Western Union.		Postal telegraph.		Per cent. reduction.	
	Day.	Night.	Day.	Night.	Day.	Night.
To Washington.....			\$0 30	\$0 30	-----	-----
To Chicago	\$1 00	\$0 50	0 80	0 30	20	40
To Cincinnati	1 00	0 50	0 50	0 30	50	40
To Saint Louis	1 50	0 75	1 00	0 30	33 $\frac{1}{3}$	60
To New Orleans	2 00	1 00	1 25	0 50	38	50
To Mobile	2 00	1 00	1 25	0 50	38	50
To Houghton, Mich.....	3 00	1 50	1 00	0 50	66	66
To San Francisco.....	2 50	2 50	1 25	0 50	50	80

The average rate by the Western Union telegraph is about 60 cents.
The average rate by postal-telegraph bill..... 40 cents.

Per cent. of reduction..... 33 $\frac{1}{3}$

There is no reason why the letter and telegram should not be governed by the same laws. Under this system the public will deliver telegrams and letters to the same clerk, who will hand the telegram to the telegraph-operator for transmission, the letter to the railroad-employé. Both will be received at their destinations—the one by the agent of the telegraph, the other by the agent of the railroad, and handed to the post-office clerk, and each delivered by carrier or messenger. The increase of employés will be little more than the ratio between the telegrams and letters; that is, as two is to eighty. The railroads furnish their own means of transportation. The telegraph-company will furnish and operate its lines. The business will be carried on in strict analogy with the present business of the Post-Office Department. It will make a greater reduction of rates than were obtained in England by the introduction of the governmental system; there, at a cost of \$50,000,000; here, without any expense to the Government. The expenditures assumed by the Department have been carefully estimated by this committee, and by the Appropriation Committee of the House, and each have reported that 5 cents postage is sufficient. This bill, or a similar one, has been reported by this committee in prior sessions of Congress, and by the Appropriation Committee of the House last session.

Mr. ORTON. Do you mean to be understood as saying that the Appropriation Committee of the House, or any other committee of the House, has ever reported your bill with a recommendation of its passage?

Mr. HUBBARD. I state that the Appropriation Committee of the House on the 18th of December, 1872, reported a bill, which was substantially like this one. There were, however, some changes made by the Appropriation Committee which I did not approve.

Mr. ORTON. It was merely reported to the House to be printed and recommitted.

Mr. HUBBARD. It was the report of a committee.

Mr. ORTON. Is it understood that when a bill is before a committee of either House, and the committee consents that the member having it in charge shall report it with a request that it be printed and recommitted, that such action shall be construed as a decision of the committee upon the merits, and that the Committee recommend the passage of the bill?

No committee of the House has ever recommended the passage of this bill, or any one like it.

Mr. HUBBARD. The report reads as follows : " Mr. Palmer, from the Committee on Appropriations, made the following report, to accompany bill H. R. 3261 : The Committee on Appropriations, to whom was referred a bill to connect the telegraph with the postal service, and to reduce the rates of correspondence by telegraph, report—" The report was adopted by the committee, and made by Mr. Palmer on instruction ; but, as the committee was not called, they had no opportunity of making a formal report to the House. It recommends the passage of the bill, substantially the same as this.

Mr. ORTON. Let me call your attention to the action of the special committee of the House charged with the consideration of this subject, of which General Washburn was chairman. That committee submitted two reports at the same time, one being diametrically opposed to the other. General Washburn reported a bill providing for the purchase of all the telegraph-lines by the Government, and General Palmer, of the same committee, reported the postal-telegraph bill of Mr. Hubbard, similar to the one now before this committee. Did that committee recommend the House to pass both bills ?

Mr. HUBBARD. They each requested the House to adopt their bills. It is, however, a matter that can be easily settled, the Senator from California, Mr. Sargent, was a member of the Appropriation Committee that reported the bill.

The first section of the bill before the committee authorizes the Postmaster-General to establish postal-telegraph offices wherever required by the wants of business ; the second section establishes the rates for ordinary messages ; the third section fixes the rates for press-dispatches ; the fourth authorizes the Postmaster-General to contract with the telegraph-company for furnishing lines and operators, and transmitting telegrams between the offices ; the fifth section provides for the prepayment of the messages by stamps, and contains provisions regulating the use of the telegraph ; the sixth provides that the law of letters shall be applicable to telegraphs ; the seventh incorporates the Postal Telegraph Company ; the eighth fixes the capital and requires the company to take at an appraised value any existing lines that desire to sell their property, and authorizes the construction of all lines required.

I will not take the time of the committee any further, reserving the privilege of replying to any remarks that Mr. Orton may make. Before closing I would like to call the attention of the committee to a case in 23 Michigan Reports, *Tromblery vs. Humphrey*, and will read the marginal note :

The eminent domain is the rightful authority which exists in every sovereignty to control and regulate those rights of a public nature which pertain to its citizens in common, and to appropriate and to control individual property for the public benefit, as the public necessity, safety, convenience, and welfare may require. The scope of the eminent domain and the States : The States cannot any more exercise this right within their territorial limits for the purposes which, under the divisions of the power between the United States and the individual States, are within the sphere of the sovereignty of the United States than as if the two governments were wholly foreign to each other. Such purposes, though, to be accomplished within the territorial limits of the State, are beyond the scope of the eminent domain of such State. Then, the point is, the right of the United States to erect light-houses, being for a national purpose, is not among the ends contemplated in the creation of State governments. The right of the eminent domain in any sovereignty exists only for its own purposes and to furnish machinery to the General Government. For it to appropriate lands for national objects is not among the ends contemplated in the creation of State governments. When we have reached the conclusion that the laws of any State can operate only within the limits of its sovereignty, this case is disposed of. It is not a matter of importance whether those limits are territorial or by defined subjects.

Mr. ORTON. Will you please state to the committee what was involved in that case and what the decision settled? It is a very important decision, and reverses the previous practice both of the Federal Government and that of the States.

Mr. HUBBARD. The question was, whether a State could condemn lands for a light-house for the use of the United States; the court decided that it had no such right.

Mr. HAMLIN. But it held that the United States had that right.

Mr. HUBBARD. That the United States necessarily had it.

Mr. HAMLIN. In Maine they have been obliged to condemn the land. The people asked a great deal more than we ought to pay, and therefore we resort to that right as States do.

Mr. MERRIMON. I ask if there is any case in which a State has refused to cede land to the United States.

Mr. HAMLIN. O, no; we have a law that covers that; but this condemning was where the parties could not agree upon a price.

Mr. MERRIMON. What effect would taking possession of the telegraph by the Government have upon its administration in the way of giving the political party in power the management of the telegraph, increasing their control and power over the Post-Office Department?

Mr. HUBBARD. I do not think it will increase its power. It can send messages now by paying for them, and it will have that right under this bill.

Mr. MERRIMON. Suppose the democratic party shall have the ascendancy at the next presidential election; having control of the post-offices and of the telegraph, they can, by inspecting the telegrams know what their opponents are doing. Then, it has this power to prostitute its position, and it gives the party in power access to the business interests and news of the country at a tremendous advantage. How far would it give the political party administering the Government the power to take virtual possession of the Government and administer it indefinitely?

Mr. HUBBARD. We think it does not give any increase of power. Every telegram must be paid for whether it is sent by a Government officer or any one else. There will be a corporation to own and operate the lines as there is at present.

Mr. MERRIMON. Would it afford an opportunity to the party in power to accomplish the ends that I have indicated?

Mr. HUBBARD. I do not think it would offer any more or even as great an opportunity as it now has. As I have stated, the press is associated with the telegraph, making a close corporation. Under the system which we propose that connection will be severed, and the right will be given to every paper to send whatever telegrams it pleases.

Mr. ORTON. If the transfer of the telegraph from the Western Union Company to the Government would result in benefit to the press, why is it that there was no such institution in England as the Associated Press until the government took the telegraph from private hands, which is the fact?

Mr. HUBBARD. Mr. Gladstone, in one of his speeches, is reported to have said that before the establishment of a government telegraph the rates were so high that the press could not use it. Then the Times and other London papers controlled the press and politics of England; this power has been transferred to the country-press. There is four or five times as much telegraphic news published as there was under the old *régime*. Now several of the leading newspapers hire the use of wires at night and transmit as much news as they please. There are eight or ten

papers in as many of the principal cities of Great Britain that at night connect the wires thus hired at the editorial and publishing offices at Liverpool, Glasgow, Dublin, or Edinburgh with their offices in London. At a certain fixed time every evening the wires are connected and the agent telegraphs the news to his paper, and in that way four or five times as much telegraphic news is published as under the old system. We think the result would be the same here, and that it would greatly increase the independence of the press by breaking up existing alliances between the Western Union Telegraph and the Associated Press. Then, as to the power to read private correspondence, all telegrams can be written in cipher; but I believe the danger from this cause is very slight as the correspondence will soon be come so large that it will be impossible to select for perusal any one telegram or to remember its contents.

Mr. MERRIMON. Your plan is self-sustaining?

Mr. HUBBARD. Self-sustaining. We intend to have the rate so high that it will pay the operating expenses, five cents to the Government, and a fair dividend upon the investment.

Mr. MERRIMON. How would it do for the Government to contract for this business and let it out as it does the carrying of the mails?

Mr. HUBBARD. This was the plan originally proposed, but it met with so much opposition, principally on the ground that it would destroy existing companies, that the plan was abandoned for the one before the committee.

Mr. FERRY. Do you propose to put on your own operators, or use the postmasters and assistants?

Mr. HUBBARD. We should undoubtedly utilize the postmasters in country-towns.

Mr. FERRY. Many post-offices are kept open only a certain number of hours a day; in that case you expect the post-offices to be kept open longer?

Mr. HUBBARD. Yes, sir; if required by the business.

Mr. RAMSEY. If the correspondence of the country is changed from the post-offices to the telegraph, will not the Post-Office Department be deprived of a considerable revenue?

Mr. HUBBARD. The telegraphic business will ultimately be enormous, and it will absorb a large portion of the revenues of the Postal Department. All the business that now passes over the wires would revert to the post-offices if there were no telegraph-lines in existence.

Mr. HAMLIN. What do you estimate the present cost of constructing a line of one wire per mile?

Mr. HUBBARD. It is necessary to specify how and where it is to be built. Whether on a railroad or a common road; if on a railroad, what facilities the railroad will give. A pole costs one and a half dollars in Chicago; 400 pounds of wire to the mile at 11 cents a pound; insulators 10 cents each. I here give the cost of the materials required in the construction of a line. The poles must be moved to their several locations. This cost will vary from 50 cents a pole to \$1, according to the distance and the facilities for moving them.

Mr. HAMLIN. What is the cost of each additional wire?

Mr. HUBBARD. If your pole is suitable for the wire it is comparatively little.

Committee adjourned.

THIRD DAY.

JANUARY 20, 1874.

Mr. ORTON. Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: The bill under consideration is entitled "A bill to provide for the transmission of correspondence by telegraph." For more than four years a scheme similar to that which is embraced in this bill has been under consideration by the Post-Office Committees of the Senate. The House Committee on Post-Offices, previous to that time, after a very full consideration of the subject, and of other propositions submitted to it, which contemplated the connection of the Government with the telegraph in some form made an unanimous report adverse to all the propositions. Subsequently, a special committee of the House was raised on motion of General Washburn, of Wisconsin, since governor of that State, to which was referred a bill somewhat similar to that now before the committee, and, also, a bill introduced by himself, proposing to establish a postal telegraph, the Government to acquire all the telegraph lines, to own and control all property, and to conduct the business exclusively by Government agents. Both of these bills were fully considered by that committee. I understood Mr. Hubbard to say at the last session of this committee that his bill had been reported favorably by the special committee of the House, or by the Committee on Appropriations of the House, which subsequently had charge of the subject. Both of those committees did, on different occasions, authorize reports to be submitted to the House, as I understand, only for the purpose of getting action to enable them to be printed, after which they were re-committed to the committees. Certainly, no recommendation has ever been made by any committee of the House that Congress should pass such a bill substantially as that now before this committee, or any other bill looking to the acquisition and operation of the telegraph by the Government.

It is nearly four years since I had the honor to appear before this committee to discuss this subject for about fifteen minutes. Since that time this committee has presented to the Senate three, and possibly four, reports on the subject, which I have understood were recommendations that the Senate pass the bills which the committee reported. It has not, however, seemed to me probable that a measure involving such grave considerations affecting personal rights and governmental policy as this, would ever be seriously considered by the Senate until the representatives of the capital invested in the business, and those to some extent interested in the policy to be affected by it, had been afforded ample opportunity to be heard. That I have been correct in that impression is shown by the fact that the committee has recently done me the honor to invite me to appear before them and state my views on the subject. This I now propose to do, and I will endeavor to present my objections to the bill under the three following heads:

First. That Congress has no right to pass this bill: 1. Because it is a violation of the Constitution, in that it proposes to take private property for private as well as public uses, not only "without just compensation," but without any compensation whatever; 2. Because its passage would be a violation of the contract entered into between the Government and the telegraph-companies now carrying on the business which have accepted the terms of the act of Congress approved July 24, 1866.

Second. That if there were no constitutional objection nor any violation of contract involved, it would be inexpedient to pass the bill, be-

cause it contemplates an enlargement of the sphere of Government as well as a vast increase in its patronage; and, although the ostensible object is to benefit the public, the real purpose is merely to transfer the management of an important business from one set of private parties to another.

Third. That if it were constitutional and right, so far as private interests are concerned, and if there were no considerations of public policy involved, there is nothing in the present condition of the telegraphic service, either in respect to facilities provided or the rates charged, which requires Congress to provide a remedy; and if there were, an adequate remedy is not provided in this bill.

The constitutional provision which it seems to me this bill infringes is that which declares that private property shall not be taken for public use without just compensation. Now, this bill proposes to establish in the business of telegraphing Mr. Gardiner G. Hubbard, and certain other persons named therein, to be associated with him, and to confer upon them the exclusive right to acquire all the telegraph-lines and property in the United States; to enter into a contract of alliance with the Government of the United States through its Post-Office Department; and, in that connection, to enjoy special, peculiar, and valuable privileges, which, it is claimed, would render it possible for the proposed company so to compete with all existing companies as to destroy or seriously depreciate the value of their properties. In this connection I desire to call the attention of the committee to a few authorities bearing directly upon this question of the constitutional right of Congress, or of any legislature, so to legislate as to take private property for public use, without just compensation, or so to legislate as to destroy the value of property without compensation.

When a law annihilates the value of property, and strips it of all its attributes by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation, and certainly within the spirit of a constitutional provision intended expressly to shield private rights from the exercise of arbitrary power. (*Wynehamer vs. The People*, 3 Kernan 398.)

It would be a very curious and unsatisfactory result if, in construing a provision of constitutional law, always understood to have been adopted for protection and security to the rights of the individual as against the Government, and which has received the commendation of jurists, statesmen, and commentators, as placing the just principles of the common law on that subject beyond the power of ordinary legislation to change or control them, it shall be held that if the Government refrains from the absolute conversion of real property to the uses of the public, it can destroy its value entirely; can afflict irreparable and permanent injury to any extent; can, in effect, subject it to total destruction without making any compensation, because, in the narrowest sense of that word, it is *not* taken for the public use. Such a construction would pervert the constitutional provision into a restriction upon the rights of the citizen, as those rights stood at the common law instead of the Government, and make it an authority for invasion of private right under the pretext of the public good, which had no warrant in the laws or practices of our ancestors. (*Pumpelly vs. Green Bay Company*, 13 Wallace's Rep., pp. 177, 178.)

Can the legislature have power to do that indirectly which it cannot do directly? If it cannot take away or resume the franchise itself, can it take away its whole substance and value? If the law will create an implication that the legislature shall not resume its own grant, is it not equally as natural and as necessary an implication that the legislature shall not do any act directly to prejudice its own grant or to destroy its value? If there were no authority in favor of so reasonable a doctrine, I would say, in the language of the late lamented Mr. Chief Justice Parker in this very case, "I ground it on the principles of our Government and Constitution, and on the immutable principles of justice, which ought to bind governments as well as people." (*Story, J., Charles River Bridge vs. Warren Bridge et al.*, 11 Peter's Rep., 617.)

If it had been proposed to pass an act for the sequestration of the toll of Charles River Bridge to an amount not exceeding sixty thousand dollars, to build a bridge for the use of the commonwealth where the Warren Bridge has been built, it is not believed that any member of the legislature would have voted for it. A sense of justice would have prevented the adoption of a measure so inequitable and oppressive upon its front. But what is the dif-

ference between a sequestration of the money actually in the plaintiff's treasury and an act to prevent that amount from going into their treasury? I ask, what difference is there, in effect, of the one and of the other upon the plaintiff's interest? The difference is in form only, not in substance." (*Charles River Bridge vs. Warren Bridge*, 7 Pickering's Rep., p. 503.)

Of course, it is well understood by those who are familiar with the case of the Charles River Bridge against the Warren Bridge that the opinion which I have cited was not sustained by a majority of the court. But it is an important fact, and one bearing directly upon the question now before the committee, that although the Supreme Court of the United States did not hold that the incorporation of the Warren Bridge Company was a violation of that provision of the Constitution (in respect to the Charles River Bridge) which prohibits the taking of private property for public use without just compensation, yet the injustice of the act was so apparent that, subsequently, the legislature of Massachusetts voluntarily made an appropriation of \$25,000 to repair the damages sustained by the Charles River Bridge by the establishment of its rival.

Again :

Even if, upon a fair construction of the grant the power conferred is broad enough to protect the company against all the consequential injuries to private interests, and was so intended by the legislature, it would be impossible to uphold it to this extent where no provision has been made for full compensation. It would be in violation of the fundamental law of the land. (*The People vs. Gray*, 25 Wendell's Reports, 464.)

Again :

A proper construction of the word "taken" makes it synonymous with seized, destroyed, deprived of. It is therefore evident that the legislature have no power to authorize in any case either a direct or consequential injury to private property without compensation to the owner. (*Evansville Co. vs. Dick*, 9th Indiana, 433.)

Again :

In the extension of the National Road through the State of Ohio, a free bridge was thrown across a stream by the side of a toll-bridge, which had some ten or fifteen years of its charter to run. The new bridge did not in the least obstruct the passage over the old one; and it was contended that as no exclusive right was given under the first grant, the owner of the toll-bridge was entitled to no compensation. It was said on that occasion, as it has been argued on this, that the right was given subject to the discretion of the legislature, as to a subsequent grant; and that the new bridge could not be objected to by the first grantee, whether it was built under the authority of the State or Federal Government.

This course of reasoning influenced a decision against the claimant in the first instance; but a reconsideration of his case, and a more thorough investigation of it, induced the proper authority to reverse the decision and award an indemnity for the injury done. The value of the charter was estimated, and a just compensation was made. This, it is true, was not a judicial decision, but it was a decision of the high functionaries of the Government, and is entitled to respect. It was dictated by that sense of justice which should be felt on the bench and by every tribunal having the power to act upon private rights. (11 Peters's Rep. 568.)

It is to that sense of justice that I appeal to prevent the passage of a bill which proposes to do what has never yet been done by Congress, to create a corporation to carry on the telegraphic business within the States in competition with corporations created by the States, aided and encouraged by the prestige, the power, and patronage of the Federal Government, and, to some extent, by money drawn from the public Treasury. That is a competition from which any private corporation may well shrink; and, in the event of the creation of this corporation and of its entering upon the business contemplated by this bill, I have no doubt that great injury would be done to the property and business which I represent.

There is another reason why Congress has no right to pass this bill. Prior to 1866 the only congressional action upon the subject of the telegraph was an appropriation of \$30,000 to enable Professor Morse to con-

struct an experimental line between Washington and Baltimore and the granting to sundry applicants permission to erect and operate lines through the Territories across the public domain to the Pacific coast. In 1866 application was made to Congress by certain parties for an act of incorporation under the title of the National Telegraph Company. A bill for that purpose was introduced in the Senate, and, I believe, also in the House, and considerable discussion was had upon it in the Senate. The bill was changed, however, from one to incorporate a private company to carry on this business in the States to a general law, which proposed to confer on all telegraph-companies then existing under the laws of any State, or which might thereafter be organized pursuant to the laws of any State, free right of way across the public domain, the right to take land in limited quantities, and to take timber and stone for posts and stations. It also appeared to confer some rights and privileges within the States. It has recently been claimed, on the part of the Southern and Atlantic Telegraph Company, operating a line of telegraph between Washington and points in the Southern States, that the law of 1866 gave that company rights of way through the States upon railroads and post-roads, without compensation to the owners of the land on which the lines were constructed, and a decision to that effect has been rendered by the United States court for the district of Virginia in a suit brought by the Orange, Alexandria and Manassas Railroad Company against the Southern and Atlantic Telegraph Company. The case has been appealed to the Supreme Court of the United States, and is expected to be argued within a few weeks. It is not necessary, therefore, to consider this point further at this time, and I pass to the consideration of the compensation which the United States required of the telegraph-companies for the benefits conferred by the acts of 1866.

They were, first, that messages between the several Executive Departments of the Government and their officers and agents should have priority over all other business; second, that the Postmaster-General should have the right to fix annually the rates at which Government messages should be transmitted. No company was entitled to enjoy any of the privileges tendered by this act until they had filed their assent in writing with the Postmaster-General.

The Western Union, and all the telegraph-companies of the United States, with, perhaps, one or two unimportant exceptions, have complied with that requirement, by filing their assent with the Postmaster-General, and are, therefore, entitled to enjoy all the benefits conferred by the act.

I claim that, by the passage of that act, which was not solicited by any person then connected with, or in any manner interested in, the telegraphic business, and by its acceptance on the part of the telegraph-companies, a contract was entered into between the United States and those companies, as binding in honor, if not in law, as if executed between individuals and under seal.

There was another important provision in that act, which I must not omit to state. Perhaps to the Government it is the most important of all, and that is, that at any time after the lapse of five years from the passage of the act, the United States has the right to purchase all the lines, property, and effects of any or all the companies which should assent to its provisions. By their assent companies bound themselves to that provision. Speaking for myself only, yet believing I fairly represent the views of the representatives of the other telegraph-companies who subsequently decided to accept the provisions of that act, this was my understanding of the matter. The Government said, in effect,

to the owners and managers of telegraphic property in the United States, "Representations have been made that you are not conducting the business in some sections of the country with due regard to the public interests. You shall have five years in which to enlarge your property, extend your lines, increase your capacity, and otherwise improve the conduct of your business. If, during that time, you succeed in satisfying the public that they are being fairly served, at reasonable rates, you will be permitted to go on in the conduct of the business, and in the enjoyment of the profits to be derived therefrom. But, on the other hand, if you do not do this, if you fail to meet the just demands of the public for increased facilities and reduced rates, or in any respect fail to meet their reasonable expectations, then it may become necessary for the Government to interfere."

But interfere how? By setting up a competitor, with the Government as the active and responsible partner, and its patronage and goodwill thrown in to aid in destroying existing companies? No; but by the purchase of the property of such companies at a valuation to be fixed by competent and impartial arbitrators.

Now, at this point, Mr. Hubbard will probably say, "I have anticipated that objection, and have made provision in the bill that my company shall be bound to purchase the property of any telegraph company in the United States that, within one year from the passage of this act, notifies me of its desire to sell." And, I presume, he will claim that this provision meets the constitutional objection I have previously raised. Let us look a little at this point. I do not understand it to be claimed, and it would not be true if it were, that Mr. Hubbard and his associates in this bill are the owners of a single mile of telegraph line in the United States, or that he has ever been connected with the business. But he proposes that Congress shall say to all the owners of telegraphic property in the United States, "Gentlemen, we have conferred upon Gardiner G. Hubbard and his associates, the exclusive right to purchase the telegraphic property in the United States, and, thereafter, to have a monopoly of the business. We have more confidence in his ability to conduct an intricate and delicate business that is a quarter of a century old, and in which he has had no experience, than we have in the men who are now conducting it. And, if you object to this arrangement, you can sell out to him and get stock in his company, or cash if you prefer it."

Let us suppose that Congress has passed this bill, and conferred this extraordinary right upon Mr. Hubbard and his associates; and that, after due consideration, the Western Union Company say to Mr. Hubbard, "We are satisfied that it will be better for us to sell our property at such a value as five arbitrators will name for it than to undertake to conduct such a competition against you, sustained and protected as you will be by the Government." Suppose that Mr. Hubbard replies, "Yes, I should be very glad to buy your lines, but this is not a good year for selling new telegraph stock, and subscribers are backward about taking stock in my company, notwithstanding the special and peculiar inducements which I have to offer; therefore I am unable to take your lines and pay cash for them, but I will pay you liberally in my stock." The option to take his stock would remain, but a prudent man would certainly hesitate about exchanging stock that has a fixed value in the market, that represents an established business, which gives promise of satisfactory results, for stock in a new corporation, the value of which is yet to be determined.

Mr. MERRIMON. If it will not disturb you—

Mr. ORTON. Not at all. I shall be pleased to have questions put to me at any time.

Mr. MERRIMON. Supposing the objection you make to this bill be good, could it be obviated by another provision for condemning this property to the use of the United States?

Mr. ORTON. I do not admit that the United States have any right to condemn this property. I claim that the United States have already provided by the act of July 24, 1866, the mode in which it will acquire existing telegraphic property whenever it shall decide to control it. Whatever may have been the authority of the United States to condemn telegraphic property in the first instance, I claim that, having exercised it by legislating on the subject, and, especially, having so legislated as to establish a special compact between the Government and the telegraph-companies, it is now estopped from taking any new proceedings for condemnation, and is bound in honor, and, I believe, also, by law, to proceed in the manner provided in the act of 1866.

It is the common practice, if it is not common law, when one party to a contract persistently refuses to perform its stipulations to assume that the other party is discharged from its obligations to perform. Now, the telegraph companies in the United States are performing their stipulations under the contract of 1866 every day of the year. They are giving Government messages priority over all other business, and they are sending them at the rates fixed by the Postmaster-General, which, in respect to some of the business, do not amount to half what the companies receive from the public. Now, if it is not the intention of the Government to keep that contract, then, in common fairness, the companies should be released from their obligation.

Mr. HAMLIN. If it be conceded that the right of eminent domain be in the Government, can Congress divest the Government of eminent domain?

Mr. ORTON. I have not conceded that it is in the Government to the extent of taking the property of telegraph-companies.

Mr. HAMLIN. You were arguing from the concession.

Mr. ORTON. Yes. But that concession is a stipulation in a contract entered into between the Government and the companies, under which no question as to the right of the former to acquire telegraphic property can be raised by the latter. The right of eminent domain, which belongs to the Government of the United States, can be exercised only in the manner prescribed by Congress, and Congress is the sole judge of the manner in which it shall be exercised.

The usual mode of taking private property for public use is to appoint commissioners or arbitrators for determining the value. That is precisely what Congress has already done in respect to the telegraph by the act of 1866. It has not decided to take the property, but it has agreed that whenever it does so decide it will do it in a certain manner, viz, by five arbitrators, two to be chosen by the Government, two by the companies, and an umpire by the four. But Congress has no right to condemn my property for the benefit of Mr. Hubbard or any other man, even if provision be made for compensation. It can only be condemned for public use. To pass this bill would be equivalent to saying, not only has the constitutional provision prohibiting the taking of private property for public use without just compensation been disregarded, but there has been substituted the startling doctrine that private property may be taken by Congress for private use without any compensation whatever.

When interrupted I was about to call the attention of the committee

to a few extracts from the report of the Post-Office Committee of the House concerning the law of 1866, and the contract which I claim exists thereunder. Referring to that law, the committee say:

Is there not, in view of the relations thus voluntarily established, a solemn compact between the Government and these corporations, which would be violated by any legislation tending to depreciate the value of their property before the right to take it at a valuation accrues? *

Would any of these companies have accepted the terms of the act, and bound itself by its obligations on any other understanding than that the Government, with whom it contracted, should do nothing to violate the spirit of the compact so long as the obligations of it continued? There is not within the knowledge of the committee any precedent to justify the Government in entering into competition with its own citizens, exercising franchises secured to them by legislative authority and to the injury of private property, without providing a just measure of compensation. *

Mr. RAMSEY. What year was that?

Mr. ORTON. February 24, 1869, the third session of the Fortieth Congress, report number thirty-two.

Again the committee say:

Two system of telegraphs—one public and one private—cannot operate side by side with success to either or with benefit to the public. The functions of the Government are necessarily exclusive; and whenever it formally undertakes any service, as proper to be exercised by it, private parties must be excluded from the performance of the same service.

It is in view of the provisions of this act of 1866 and of the interpretation of it made five years ago by the unanimous report of the House Committee on Post-Offices that the Western Union Telegraph Company has during that period doubled the extent of its lines, more than doubled their carrying capacity, and has reduced the average charges to the public more than 50 per cent. We have done it, relying on the good faith of Congress, and in expectation of a due recognition of our efforts to meet the requirements of the public, as well in regard to facilities as in respect to charges. I cannot believe that, after full, careful, and deliberate consideration of the questions involved, that this committee will advise the Senate to pass a bill which encroaches not only upon private rights, but also proposes a distinct violation of a solemn agreement made with the United States upon its own invitation.

The Senator [Mr. Merrimon] expressed the opinion that I would be likely to devote some time to the special consideration of the question of eminent domain.

Mr. MERRIMON. I said I had expected you would discuss that subject this morning.

Mr. ORTON. In previous discussions of this subject I have not been disposed to give much attention to that question. It has not appeared to me that I was called upon, in view of the numerous other points in this case, to discuss the larger question of the right of the Government to acquire telegraphic property by eminent domain, or of its right to acquire other property and conduct other business within the States. Congress will, at an early day, have occasion to consider this question in connection with the bills now before it, which contemplate the construction and operation of railroads within the States by corporations created by Congress. I believe that Congress has the right to authorize the building of a road, turnpike, or railway whenever it is deemed necessary that such a road should exist to enable the mails to be transported or for military purposes. But I do not think it was the intention of the framers of the Constitution that the United States should exercise the authority to build roads by constructing them to be operated in competition with those provided by the States. The constitu-

tional provision for post-roads was made at a time when there was no system of public roads, and when it was absolutely necessary for the safety of the colonies, for their protection from Indians and other enemies, that they should be able to maintain communication with each other. The condition of the colonies at that time did not justify the belief that proper provision for post-roads would be made, or indeed could be, without the aid of the Federal Government, and it was to confer a power the exercise of which might be necessary for the general welfare, but which it was not expected would be exercised except in cases of actual and pressing necessity, that the authority to "establish" post-roads was conferred. Now, however, that the country is gridironed all over with rails, it appears to me as inexpedient as it is unnecessary, conceding the constitutional right, that two sovereignties, the Federal and the State, shall be, at the same time and substantially in the same place, exercising separate and independent jurisdiction over the internal commerce of the States.

I come now to the second of the three points which I submitted at the opening: That if there were no question as to the right of Congress under the Constitution, nor any violation of a contract previously entered into between the Government and the telegraph-companies, it is inexpedient to pass this bill.

Let me first invite your consideration of the results which will follow if the bill becomes a law, and all the telegraph-companies in the United States, having agreed with Mr. Hubbard as to the amount of stock of the Postal Telegraph Company they will accept in exchange for their property, turn their lines over to it.

The telegraph must at once be moved into the post-offices. The chief inducement for passing this bill is represented to be the great saving that will result from utilizing the post-office employés, many of whom it must be presumed are idle part of the time, and the saving of the double rents now paid by the Government and the telegraph companies.

Now, if the Post-Office Department is maintaining a large force of idle men anywhere, I, as one of the people who contribute taxes to support the Government, respectfully suggest to this committee whether it would not be better to dismiss the idlers than seek to make their services profitable by setting them at work with which they are wholly unfamiliar. If all the telegraph-stations in the country were transferred to the post-offices to-morrow, there is not a man in any one of the latter who could render the slightest service to the telegraph. The telegraphic business cannot be stopped for a single day. Its work must be performed by those who possess the requisite experience and skill. If, therefore, either class is to be dismissed, it must be the clerks in the post-offices. But there are no idle men in the telegraph business. Telegraph-operators when transferred to the post-offices would have no time for receiving mails and distributing letters unless the sending of messages was postponed. They cannot be telegraphing and sorting and delivering letters at the same time. These two departments of business sustain no relation to each other. They have nothing whatever in common. When it is said that the telegraph and the postal service are the two means by which ideas are communicated from one point to another, the parallel is exhausted. The claim that it would be possible at any considerable number of postal stations to effect a saving of expense by uniting the telegraph with it is utterly fallacious. Greater economy is already secured by arrangement with railroad companies whereby an agent, a part of whose duties it is to send and receive messages on railroad-business, also sends and receives messages for the public.

Let me digress a moment in order to illustrate this point more clearly. The train which leaves Washington to-night at nine o'clock for New York can carry a thousand letters or a million, and under the present arrangement there will be no difference in the cost to the Government. The expenses of the Post-Office Department are not increased one penny under the present arrangement by an increase of the number of letters transported. I do not say that this should be so, but simply speak of it as I understand it to be. But suppose the facts were otherwise, and that the cost of carrying the mails was proportionate to the service rendered, and mails were charged a certain rate per ton. Then calculate what a ton of letters would amount to at 3 cents for each half ounce, equal to 96 cents a pound or nearly \$2,000 a ton. The profit to the Government from carrying letters at any rate for transportation which may be agreed upon, express rates or double express rates, would be enormous, and would increase as the number increased in a constantly enlarging ratio.

On the other hand, when a message starts from Washington to New York, it monopolizes the wire all the way through during the brief period required for its transmission. And when the maximum capacity of one wire has been reached, another wire must be added, and another operator at each end of it, and possibly a repairer at some intermediate point, so that the increase of expense, although not exactly proportionate to the increase of business (for, with a large force, judiciously handled, it is possible to economize their labor somewhat) is always nearly so. In respect to the railways, however, at the same moment that a train starts from Washington destined for New York, another train may leave Baltimore, another start from Wilmington, another from Philadelphia, and another from Trenton, all on the same track, and all doing their work at the same time, while the opposite track, may at the same time be utilized in precisely the same manner by trains moving in the opposite direction, thus employing all their facilities and deriving constant benefit from the capital invested every hour of the twenty-four.

The business of the telegraph, however, is concentrated into a few hours in the middle of the day. A large part of it is done within six to eight hours, yet the telegraph-offices in the principal cities are kept open through the twenty-four hours. The fact seems worthy of special remark that, between all the principal cities of the country, it is possible to send messages every hour of the year. But it is not possible to get letters out of the post-office every hour in the year. It is hardly possible to do it every day of the year, for there are many days when the opportunity for doing so is limited to an hour in the morning and another in the afternoon.

But let us return to the expediency of uniting these two services, and consider the subject of the possible saving of rents. The amount paid by the Western Union Telegraph Company for rents, while a considerable sum, is but a small fraction of its total expenses. The aggregate is about \$275,000 a year, to which should be added a small sum to cover the cost of the free messages sent for hotel-proprietors and other parties who provide space and other accommodations for our offices. For a large majority of its offices the Western Union Company pay no rent at all, or merely a nominal sum in free service. These offices are at railroad stations, hotels, boards of trade, produce-exchanges, cattle-yards, and a variety of other places where the business of the country is being carried on during business-hours, and where it is a great convenience to business-men that telegraph-stations shall be located. Now, these

stations must all be maintained whether the telegraph be united with the postal service, or remain, as now, in private hands. What would the public think of a reform whose initial step was in the direction of a curtailment of facilities essential for the convenient transaction of the most important business now being carried on. But if all the present telegraph-stations are to be continued, how will it be possible to effect any saving of expense by opening additional stations at the post-offices. It is true the additional expense might not be large, but it would certainly be something.

In some of the principal cities and notably in the city of New York, the post-offices are not conveniently located with respect to accommodating the customers of the telegraph. In the city of New York there are now more than one hundred telegraph stations, while there are only a dozen post-offices; and, although I had the option for several years to open a telegraph-station in every one of them without charge for rent, I have opened but one. There are more messengers connected with the different telegraph-companies and available for the prompt delivery of messages in that city than there are letter-carriers in the employ of the post-office, and yet it is claimed that the Government can receive, transmit, and deliver twice the number of telegraphic messages now being handled without materially increasing the expenses of the Post-Office Department.

Mr. FERRY. Not wishing to disturb you, Mr. Orton, but as I understand the arrangements of the telegraph-company, they have a central office and distributing offices—substations. What would prevent the new line from having a central post-office and other offices in other parts of the city?

Mr. ORTON. There is nothing to prevent that, but I do not see, in that case, how any saving of expense is to be secured. If you will maintain all the offices that the telegraph companies maintain now, and open additional ones in the post-offices perhaps the public would not be inconvenienced by the proposed change. You are but partially correct, however, when you say we have a central telegraph-station and substations. We do have a central station and substations, but many of the substations become central stations during certain hours of the day. For example, the substation at the Stock Exchange is in direct communication with the Stock Exchange in Philadelphia and Boston during certain hours of the day. The station of the Produce Exchange has direct telegraphic communication with Chicago and Milwaukee. The Cotton Exchange, which is another telegraphic center, has direct connection with New Orleans and other cotton-ports at the South, and particular attention is also given to the petroleum-trade, to the pork-trade both of Cincinnati and Chicago, and to the cattle-yards at Saint Louis, Chicago, East Liberty, (near Pittsburgh,) Philadelphia, and also at Allerton's in, and Communipaw near, New York. The telegraph is so arranged as to treat all these either as substations connecting with the central office in New York, or as independent stations devoted to the business of the locality where they are situated. Now, it would be just as necessary under the arrangement proposed by Mr. Hubbard, that all these offices should be maintained as it is now. If he proposes to provide additional facilities by opening telegraph-offices also in post-offices that is an item of progress, to credit for which his scheme would be justly entitled.

Mr. RAMSEY. What number of dispatches do telegraph companies now send?

Mr. ORTON. At the present rate they will send this year about twenty millions.

Mr. MERRIMON. What is the number of officers, subordinates, and employés in the service of the telegraphs of this country?

Mr. ORTON. I suppose somewhere from ten to twelve thousand persons. There were in the employ of the Western Union Company, on the 30th of June last, 9,930 persons, so that there must have been about 12,000 in all.

Mr. HAMLIN. What proportion of business have you with reference to all others?

Mr. ORTON. More than 90 per cent.

Mr. HAMLIN. Then the 10 per cent. additional for all other employés would cover it?

Mr. ORTON. It would not necessarily follow that if we had 90 per cent. of the business that the proportion would be the same in respect to the employés. They have established many offices in New York, and I apprehend that it would be found that they had a larger percentage of employés in relation to services done than we have.

Mr. MERRIMON. What is the average compensation of operators?

Mr. ORTON. The average compensation varies so much that it is difficult to answer that question, and for reasons that I will endeavor to explain. We offer to all communities through which our lines pass that we will open a telegraph-station on being guaranteed against loss. Our lines run through a little hamlet, and the citizens make application to us to open a station. We offer to do so, and give the use of the wires if they will guarantee the receipts shall be equal to the actual cost of maintaining the office; and, if not, that the deficit will be made good by those who sign the stipulation. Under such an arrangement a competent operator is provided, who is also to act as clerk in a country-store, his wages payable by the merchant, who is willing that a portion of his time shall be given to the telegraph, for the accommodation of the public, who are his customers. If the business will warrant, we allow a commission on the receipts to be applied to the wages of the operator. In that case our salary-account would be charged with only the amount of the commissions. There are a great many offices, including these at small railway-stations, where we pay only 10 per cent. of the receipts toward the wages of the operator. The result is that at a large number of stations the average wages paid to operators appears very low, because it is only a fraction of what they actually receive.

Mr. MERRIMON. What I wanted to get at was the average compensation.

Mr. ORTON. I could not state it exactly without consulting the records, which I will do hereafter. Commencing with the managers of large offices, salaries will range from \$150 per month (in a very few places more than that) down to \$60. At a few stations it will fall as low as \$40.*

Mr. MERRIMON. Would it require more culture and better capacity in a person to superintend a telegraph-office than a post-office?

Mr. ORTON. That is not an easy question to answer. One requires a special and technical education and the other does not. That a com.

* I have ascertained that at eighty of our principal offices, employing nearly twelve hundred managers and operators, and whose receipts amount to 40 per cent. of the gross revenue of the company, the average salary paid for the month of December, 1873, was \$80.50. Excluding female operators and males who serve as assistants rather than as regular operators, the average would be about \$90.—W. O.

petent post-office clerk may become a good telegrapher there is no doubt. Previous occupation has not much to do with it. It is as impossible to say in advance who will or who will not become a good operator as to decide, without a trial, the probability that a person who did not know one note from another would become proficient in music.

Mr. RAMSEY. What is the average length of time required to prepare a man to use the wires; that is, to become a first-class operator?

Mr. ORTON. There are so few that become what we term first-class operators that I must answer by saying it would take a long time. It is possible, however, to learn to do telegraphic work of some value, by working with those who are proficient, in six months, and sometimes in a shorter period.

Mr. HAMLIN. Is not the apparatus in use in England capable of being used by almost any one?

Mr. ORTON. Not without considerable practice.

Mr. HARRINGTON. I think there are 50 per cent. of those who try that never can become operators worth anything.

Mr. ORTON. The percentage is larger than that.

Mr. HARRINGTON. I wanted to be careful. I had an estimate once which gave the percentage as correctly as it could be had. The proportion of women is less.

Mr. ORTON. The previous training of women is not favorable, generally, to their becoming operators; but where the conditions are favorable, they learn quite as quickly as men, and where they have learned, for a large class of business, they are preferable. I could not say what proportion of women are now employed in the business. The conditions under which it is proper to employ a woman in the business are so limited as compared with men that we are unable to employ as many as we would like. We use them in the large cities where we have enough business to justify the creation of a separate department. But we cannot put them in many hotels. There was a time when it was not deemed proper to place them in railway-stations; but I believe that between Buffalo and Albany, the telegraph, at nearly every station is worked by women. The same is true on other roads.

Mr. HUBBARD. Every station in Boston is, I think, worked by women.

Mr. ORTON. The number of female operators is increasing. We employ about sixty in the New York office, who do as satisfactory work as any operators we have.

Mr. HARRINGTON. Are they not put on your city wires?

Mr. ORTON. They work the city wires almost entirely.

Mr. MERRIMON. How many miles of telegraph have you in this country?

Mr. ORTON. The Western Union has at this time about one hundred and sixty-five thousand miles of wire.

Mr. HAMLIN. How do you reckon that; you have sometimes as many as five wires on a pole?

Mr. ORTON. We reckon each single mile of wire. The mileage of line is somewhat less than half that. It is probably about seventy thousand miles.

Mr. MERRIMON. About the same as the extent of railway?

Mr. ORTON. We have a great many miles of line that are not on the railroads.

Adjourned till 10 o'clock Wednesday, January 21.

FOURTH DAY.

JANUARY 21, 1874.

MR. ORTON. GENTLEMEN OF THE COMMITTEE: At the commencement of my remarks yesterday I stated that it was my purpose to discuss the subject before the committee under three heads:

First. That Congress has no right to pass this bill, because it contemplates a violation of that provision of the Constitution which prohibits the taking of private property for public use without just compensation; that, although the Constitution does not prohibit the passage by Congress of laws impairing the obligation of contracts, yet Congress has no moral right to pass such a law in a case where there is a contract to which the Government is a party, and where private parties who have been invited to that contract by action of the Government, are performing all their stipulations.

The second point is: That if there were no constitutional objections to the passage of this bill in respect to its effect upon the property of private citizens, it is inexpedient to pass it, because it contemplates a scheme that is inconsistent with the policy of our Government; a partnership between the Government and a private corporation to be conducted in Government offices by two classes of employés, one being the agents of the Government, responsible to the Government, the other being the agents of the corporation and responsible only to its managers. Now what is likely to happen under such a state of things? It seems to me that whenever the interests of the Government and those of the corporation are in antagonism, that the natural and inevitable result will be that the interests of the Government will be subordinated to those of the corporation.

The third point was: That, waiving all considerations of constitutional right, and also of expediency so far as the relationship contemplated between the Government and the employés of the proposed corporation are concerned, there is nothing in the state of the country, the demands of the people, or the condition of the telegraphic business of the country that requires any congressional legislation on the subject; and if reforms are needed, they cannot reasonably be expected to result from the scheme proposed in this bill.

The first declaration in this bill, after providing for the incorporation of the company, is that the Postmaster-General shall, "as soon as practicable, establish telegraph-offices at all post-offices on telegraphic circuits, and at all other post-offices within ten miles of any circuit, where the salary is not less than \$500 per annum."

Mrs. Glass prefaces her recipe for cooking a hare with this wise precaution, "First catch your hare." Now, "the Postmaster-General shall, *as soon as practicable*, establish telegraph-offices." What is the condition precedent to the establishment of telegraph-offices? It is manifestly a system of telegraph-lines. There is such a system in operation to-day which private capital and enterprise have extended to every important town within the jurisdiction of the United States.

We must assume, however, that in case this bill becomes a law, the company thus incorporated must provide capital by the sale of its stock wherewith to commence the construction of a new system of telegraph-lines. No matter how much capital may be subscribed, or what sum of money may be paid in promptly; no matter if the corporation had the Treasury of the United States at its back; mere money cannot provide a telegraphic system any more than it can produce an orchard in full bearing in one year after planting the seed. Unless the proposed

company could purchase the lines of the existing companies, it would take a long time to provide a system equally complete. Although the bill authorizes the company created by it to acquire all existing telegraph-lines it would not be right for the committee to assume as a reason for its passage that this result would follow. This scheme should be considered solely with reference to the probability that the new company will be obliged to construct its own lines and to operate them in competition with those of existing companies.

Notwithstanding the very valuable privileges conferred by this bill, and for the enjoyment of which the company with which I am connected would make very liberal concessions to the public, there are features of it which cannot be separated from the others without a complete abandonment of the fundamental idea upon which the scheme is based, which render it impracticable, in my judgment, for the Western Union Company to be merged into it upon any terms.

No matter who may be Postmaster-General, or who the manager of the telegraph-corporation, or how competent each or both may be, it would be as impracticable to successfully conduct the business under any such double-headed control, as for two engineers to run a locomotive, or two officers of equal rank to be in command of an army in action at the same time. The business must be controlled by one head, with power enough to enable him to enforce his decisions, upon the propriety and correctness of which his fitness for and continuance in office will largely depend. Nothing short of such power will, in my judgment, enable the telegraphic business to be successfully managed. Now, under the Government, it is difficult to get a subordinate removed from a department without a proceeding equal to an indictment by a grand jury, and a subsequent trial and conviction. Private corporations, while intending to do justice to their employes, are interested in doing justice to the public. And while no change may be made affecting the integrity of a subordinate, if it becomes apparent that he has lost the confidence of the public, he should either be discharged, or transferred to some other position.

To return to the question of providing the telegraphic system contemplated in this bill, I maintain that if the company had \$10,000,000 in its treasury when it is ready to commence operations, it can construct, during the first year, but a limited extent of line, and then the line must either stand idle till the system projected is substantially complete, or else take the chances of competing with existing lines at a great disadvantage, in spite of the privileges to be enjoyed from the intimate connection with the Government. Success in the telegraph business depends upon a sufficiency of wires and promptness in handling them; and what success could this small extent of semi-governmental line meet with in competition with the great system now in operation?

It may be that at some future time it will become necessary for this Government to take possession of the telegraphs; a condition of things may arise that would demand their prompt and immediate acquisition. Although no such condition exists now, nothing can be done, in my opinion, that would more certainly tend to postpone or defeat the ultimate establishment of a Government system under almost any condition of things than the passage of this bill. I am confident that the result of the operation of this scheme, beginning, as other competing lines begun, and as it must begin, with only a fragment of a telegraphic system, extending over a territory too small to afford opportunity to demonstrate its ultimate possibilities, or to utilize all the advantages which might possibly result if the system were complete, but with un-

limited capacity for dissatisfying the public, and for establishing, as facts, all the evils that anybody has alleged would result from the operation of the telegraph in connection with the Government, would be disastrous.

Desiring you to accept as sincere the statement that I do not wish to sell to the Government the lines and property of the company with which I am connected, and that I do not expect at any time in the future to make such a sale, I express the hope that Congress will not do anything that would tend to so dissatisfy the public as to render it practically impossible for the Government to acquire and control the telegraph lines and business if, at any future time, the necessity therefor should actually arise.

It is true that this bill contains a clause under which any or all of its provisions may be repealed. That is doubtless a wise provision so far as the Government is concerned; but, at the same time, it is specially unjust as regards existing companies. It is possible for Mr. Hubbard and his associates, if they can raise the money, to build a system of telegraph that shall duplicate every post and every wire now in operation in the United States, without any congressional aid whatever. But it is well known in business and financial circles that it would be impossible to raise the money at this time for the purpose of establishing a competing telegraphic system to enjoy only the same facilities as other companies. Whether it will be possible to raise capital if this bill should become a law, I am unable to say; but it holds out inducements to invest in telegraphic property quite beyond anything which can be offered by any of the existing companies organized under the laws of the States. If, then, after the company has been organized, and has entered upon the construction and operation of its lines, aided thereto by the inducements to subscribe capital which this bill presents, the Government should become dissatisfied, as it undoubtedly would, and Congress should exercise the right reserved in the bill to repeal the whole or any part, by repealing only so much as relates to the partnership between the company and the United States, then there is left standing a competing telegraph company, whose capital has been obtained, and whose very existence established, by the fact that it was able to come into the field as a competitor by virtue of the Government aid thus held out. Now, I submit that this would not be a fair proceeding as between the Government and private citizens.

Congress has done absolutely nothing for the telegraph in the United States. Consider the millions of money directly donated, and the vastly greater sums granted in lands to assist the extension of our system of railroads. I do not criticise this liberality on the part of Congress. The public are satisfied with the returns from the investment thus made through the increased value of the lands through which the roads have been extended, and I believe that the contributions which Congress has thus made to the general prosperity of the country are worth far more than the value of the money and lands invested. But why is it that another business, not so important on the score of capital, but quite as important so far as facilities for intercourse are concerned, has never been the recipient of valuable favors from Congress? It is true that \$30,000 were appropriated by Congress to enable an experiment to be made with the Morse telegraph. That sort of appropriations Congress makes quite frequently, and sometimes has occasion to charge them over to profit and loss. Within a year Congress has appropriated half the sum that it gave to test the practicability of the telegraph for the purpose of testing a pneumatic scheme for using a wooden tube between the Senate and the Government Printing-Office, and yet we are con-

stantly reminded of the debt of gratitude the telegraph owes to Congress for its liberality in respect to that \$30,000 to Professor Morse. If they had given the telegraph a fraction of what has been wasted upon such hopeless experiments as that with the wooden tube, we could have more largely extended the telegraphic system and have been sending messages at still lower rates than at present. But instead of receiving aid from the Government, the telegraph has always been contributing freely to its support. Within seven years the company with which I am connected has paid for State and local taxes about \$340,000, and into the Federal Treasury during four years and a fraction of this period as taxes upon its gross receipts \$850,000 more. It also paid last year to the collector of the port of New York more than \$75,000 in gold for duties upon wire imported and used in the extension of its lines. Within five years it has paid \$328,000 in gold for duties on wire, and if duties at the same rate had been paid upon the domestic wire which we have used in the same time it would have amounted to \$240,000 more. Added to this we have been subjected to law-expenses and claims for damages from which this bill proposes to relieve the company it creates, amounting during the same period to over \$240,000, making a grand total of the items which I have enumerated of \$2,000,000, which we have been obliged to collect from the people whose business has been intrusted to us, and from the payment of which we have derived no profit.

If it is the desire of Congress to secure lower rates for telegraphing, why not first try to do it through the existing companies, by relieving them from taxation as it is proposed by this bill to relieve Mr. Hubbard and his associates, and also to some extent from the enormous duties they are compelled to pay, directly or indirectly, upon all the wire used; for it is a fact within my experience that as the tariff on wire is put up or down, the price of American wire goes up or down, and there is not a difference of more than a quarter of a cent on a pound between English and American wire of the same grade whatever the rate of duty may be.

A portion of the tax that the existing telegraph companies are called upon to pay is upon the gross receipts of their business, and the increase of State and local taxation has been very rapid within the past few years. Now, this bill proposes to make the corporation which it creates an agent of the Government, and is to become thereby exempt from taxation except for the value of poles and wires, which being the property of the company would be liable to taxation within the States where located. But, as a set-off against that liability, the bill provides that the company may advance the rates established by the bill sufficient to cover all State and local taxation which may be imposed. In effect, therefore, the bill exempts the property and the business of this company from all taxation whatever. Now, Mr. Chairman, if it be right for Congress to do that for a company that does not own a mile of telegraph-line as an inducement to parties to subscribe capital to enable them to embark in the business, why would it not be expedient and just to confer like privileges upon the existing telegraph-companies, and thus perhaps secure results as satisfactory to the public as those contemplated under this bill? Until Congress does something for existing companies, I protest against its offering premiums to induce strangers to the business to organize companies to injure them.

In the report of the Postmaster-General made a year ago, he says:

I am decidedly of the opinion that if the people interested require a postal telegraph, it should be entirely in the hands of the Government. If, on the contrary, a postal telegraph if not so demanded, then the Government should not favor one private company to the exclusion of another, *nor should it in any wise enter into competition with private enterprise.*

Although I have had occasion to differ with the Postmaster-General upon many points concerning telegraphic property and business, this is a proposition involving principles of common fair dealing so plainly stated that it would seem impossible for any one to criticise it. Yet this bill proposes to favor one private company to the exclusion of another, and to use the patronage of the Government as an element of competition with private enterprise.

Section 2 of the bill provides that the charges for transmission, except for service and Government telegrams, shall be prepaid by stamps. Mr. Chairman, if prepayment by stamps is a valuable privilege, either to those engaged in operating the telegraph or to the public, why not confer it upon the present companies? I have given to this question of prepayment by stamps much consideration, but there is this great difficulty in the way of adopting it. I can provide the stamps of the requisite denominations, procure the plates to be engraved and the stamps to be printed probably with as much facility as the Postmaster-General; but if they should be counterfeited, what redress should I have? The counterfeiter is not amenable to any of the laws of the United States for forgery, and I do not know as he would be to any State law.

Mr. MERRIMON. What is the advantage of stamps? Why have stamps?

Mr. ORTON. I am coming to that. If I could be protected in the use of stamps, I should be disposed to try the experiment of their use, leaving it optional with the public to use them or not. I will not go into the details of the reason any further than to say that I am not at all satisfied that if the obligation contemplated in the bill were imposed upon the public and the telegraph-company, it would not work great hardship to both. It may be possible in some European countries, having a uniform rate, to compel the use of stamps; but in view of the diverse rates which must exist here on account of the great distances, and especially in view of the fact that 30 per cent. of all the messages sent are not prepaid, the tolls being collected on the delivery of the message, to imperatively require prepayment by stamps would prohibit the use of the telegraph under certain circumstances. The rule of the Western Union Company is that messages may be sent payable on delivery upon the guarantee of a known and responsible party. That class of business costs more to transmit than the ordinary prepaid business. We do it, however, because it seems to be required to meet the necessities of certain classes of business.

At the board of trade rooms, at Chicago, during change hours, tickets are used because there is not time to take pay in money and make change. So the messages are entered on tickets previously provided, and the tickets are redeemed after the business of the day is over. Very little money is taken at that office although hundreds of dollars worth of messages are sent, and, on some days, the majority of them are sent "collect." Dealers in different places in the country request their agents in Chicago to send them notice of any change in the market for corn and wheat of the different grades, that amount to a quarter or half a cent per bushel. There is a fluctuating market, it may vary a quarter or half cent several times during the day, and the messages sent from the board room will be reports of these changes, and will be sent all over the West, and nearly all will go "collect." This clause of the bill is in effect a declaration that this class of business shall not be done at all. Private corporations may take the risk, if they choose, of losing the toll on an occasional message by trusting the sender. They may say: "We will trust you, Mr. Brown," or "We will not trust you,

Mr. Jones." But the Government cannot deal with the public in that way. Every one must pay, or any one must be allowed credit. This rule which requires all messages to be prepaid by stamps, instead of being in the direction of increased facility or greater public convenience and liberality, is in the opposite direction. Even in the matter of postage stamps which cost but a trifle, and long as the public have been accustomed to use them, it is sometimes difficult to obtain them. But if it were necessary to provide telegraph stamps, representing 25, 35, 55, and 80 cents each, any man who is doing much telegraph business would find it as necessary to provide such stamps as to carry currency for other expenses. In France, after thorough trial, pre-payment by stamps has been abolished.

There is an old axiom in physics that nature abhors a vacuum. Experience in the telegraph business proves that the public are decidedly opposed to certain rates, one of which is 55 cents. I regret that I have not at hand among my papers the result of a dissection of the company's business that I had made while considering the tariff question for the purpose of determining what were the rates from which our revenues were mainly derived. I remember, however, that between 25 and 30 cents there did not seem to be any preference. I could not detect that it made any difference to the public whether the tariff was 25 or 30 cents; nor could I see that 35 or 40 cents made much difference. But as between 50 and 55 the difference in business done was so great that there appeared to be a decided repugnance on the part of the public to pay the additional 5 cents. In the study of this subject I sought the opinions of practical men in every department of our business, and it was stated by some that customers frequently alleged that they were being cheated out of 5 cents. They would say, "Why don't the company make this 50 cents? I don't believe but what it is 50 cents, and that you get the other 5 cents." So in respect of 90 cents, a dollar, and a dollar ten. A customer who was charged 90 cents would say, "Why don't you make it a dollar?" And if the rate was a dollar ten he would complain of the additional 10 cents.

In the last revision of our rates we made but ten, viz: 25 cents for twenty-five miles and under; 30 cents between twenty-five and fifty miles; and 40, 50, 75, \$1.00, \$1.25, \$1.50, \$2.00, \$2.50, for the other distances. There is little or no profit in sending messages at 25 cents a piece. It costs almost as much to send a message from Wall street to the Fifth Avenue Hotel as it does to send from the former to Chicago or New Orleans—just as much for operators' wages, stationery, and all other expenses, except interest and maintenance of the lines.

Mr. HARRINGTON. You have to employ a repeating operator?

Mr. ORTON. It might happen that it would cost more to send a message from Wall street to the Fifth Avenue than to Chicago or New Orleans, because it might come to the main office, at 145 Broadway, and there be repeated. That would be off-set, however, by the probability that the message going to New Orleans or Chicago would be repeated at some intermediate station. The expenses attending the automatic repeater are not great. Milliken's repeating apparatus, with the latest improvements, requires but very little attention, and is operated at merely nominal cost. The chief operator, who has charge of a department with fifty employés, for instance, and who is obliged to be about the operating-room all the time, can easily attend to one or two pairs of these repeaters. It is the relaying of the business, the rewriting at intermediate stations when we are unable, even with the aid of

the repeaters, to work very long circuits, that constitutes the most serious item of expense in connection with long business.

Our rates are 25 to 30 cents for distances under fifty miles, and 40 cents for one hundred miles. The next two rates are 50 and 75 cents. We have no intermediate rate between 50 and 75 cents. I am not satisfied but it would have been wise to make a rate of 60 cents, because it happens now that some of our 50 cent rates are too low, and some of the 75 too high. We carry some messages farther than we ought for 50 cents, and as the next rate is 75 cents, in some instances the transition seems too sudden and the change too great. Then we have \$1.00, \$1.25, \$1.50, \$2, and \$2.50. These are the rates of the Western Union Company for messages of ten words, date, address, and signature being free.

Mr. HAMLIN. Will you state right here the distances on which each of those rates is made?

Mr. ORTON. I have stated the distances for the 25 and 30 cent rates. The 40 cent rate runs to one hundred miles; the 50 cent rate to two hundred miles; the 75 cent rate to four hundred miles; the \$1 rate to six hundred miles; the \$1.25 rate to eight hundred miles; the \$1.50 to one thousand miles; over one thousand miles from \$1.50 to \$2.50. We have no rate over \$2.50. The distances given are all computed by air-line from the center of fifty miles square. Messages may be sent thirty miles farther than the distances named for the various amounts if the stations to which they are sent are situated in the extreme corner of the square or beyond the center.

As \$2.50 is the maximum rate upon the Western Union lines, regardless of distance, a message may go from the Island of Cape Bréton clear across the continent, up into British Columbia, for \$2.50. All the business between the Atlantic and Pacific coast is done at that rate.

Mr. HUBBARD. What does it cost from Cape Bréton to Boston?

Mr. ORTON. The rate from Boston to Port Hastings, Cape Bréton, which is the only Western Union office on the island, is \$1. The rate to the other offices on Cape Bréton is 25 cents additional. The rate between Boston and Halifax is 75 cents.

Mr. HUBBARD. I know we have to pay an awful sum to Cape Bréton.

Mr. ORTON. The bill before the committee contemplates three classes of rates: A first class day rate; second class day rate, and a night rate for the third class. It provides that messages shall be transmitted in the order in which they are received, except "*priority messages*," on which double rates are to be charged. As to the expediency of authorizing a telegraph company to put one message ahead of another in active business hours, for increased compensation, the committee is as competent to judge as I am. There appeared to be a necessity for some provision of that kind, and our company inaugurated a half-rate system more than four years ago. But instead of giving priority for double pay, which we have no right to do under the laws of any State, we have invited the customer to accept of a delayed service for half the day rate, and have applied that system to the territory east of the Rocky Mountains. It was considered impracticable to extend it from the Atlantic to the Pacific coast, and the tariff was, instead, reduced from \$5 to \$2.50.

If a customer desires that a message from New York to New Orleans shall be forwarded as promptly as it is possible for the company to do it, he writes it on a certain form and pays the tariff of \$2. If his business is not urgent, and he prefers to have a lower rate, he writes it on another form, which, for a reason that you will readily comprehend, is printed in red ink, and pays but \$1 for the same service. While we do not contract

in terms to do so, it is understood that we are to deliver this message the next morning by the time business commences, and, in practice, night-messages are so delivered. The forms are printed in red ink so as to facilitate the separation of the night-messages from those requiring immediate transmission.

During the discussion before the committee last week, reference was made to this subject, and it is not, therefore, necessary to repeat the explanations then made. I repeat, however, substantially what I said then, namely, that a large majority of telegraph business is priority business, and will be sent at the priority rate, whatever it may be. People do not use the telegraph merely to gratify a whim, but because they wish to accomplish some important result, and the fact that, of the whole telegraph business of the United States, only about 12 per cent. is sent at the half or delayed rates is to me conclusive evidence of this.

Is there not danger that if the managers of the telegraph are authorized to put those messages forward first which pay the most, an inducement will be created to neglect the second class, so as to force all business either into the priority class at double rates, or into the deferred class at night-rates? I do not say that this would be the result; certainly it should not be; but human nature is weak, and money is one of the potentialities of human affairs, and the ability to collect \$2 instead of \$1 seems to offer a premium for inefficiency, shiftlessness, indifference, and dilatoriness.

There are few men who work for the mere love of labor. If they could get the same compensation for not working, I am inclined to think a majority of those who do labor would not work. But if they could get the same compensation for working only half the time, it is my opinion many would take the larger pay for the lesser service.

Let me call your attention now to a comparison of a few rates which have been collated within the last hour by my assistant, Mr. Prescott. The comparison is of the rates under the priority clause of Mr. Hubbard's bill, and of the regular day-rates of the Western Union Company:

	Present Western Union rates.	Priority rates, Hubbard's bill.
From Washington to Baltimore	\$ 30	\$ 50
New York	40	1 10
Boston	60	1 10
Chicago	1 00	2 00
Cincinnati	75	1 60
Cleveland	75	1 10
Richmond	40	70
Charleston	1 00	1 60
New Orleans	1 50	2 50
Nashville	1 00	2 00
Saint Louis	1 25	2 00
Louisville	1 00	1 60
Atlanta	1 00	1 60
Pittsburgh	50	1 10
Portland, Maine	75	1 60
Hartford, Connecticut	60	1 10
Lake City	1 25	2 00

These rates were not selected with reference to producing striking results, for the Western Union tariffs being based on air-line distances, it makes no difference whether we take the places above named, or others in the immediate vicinity of them, or the same distance apart in other directions. They were chosen simply because they represent those cities in the eastern part of the United States where the largest telegraph business is transacted. If then I am correct in assuming that a majority of the telegraph business is an emergent business, requiring the promptest attention, then am I not justified in saying that this bill should be entitled, in addition to the title which I proposed to confer upon it yesterday, "a bill to increase the cost of telegraphic correspondence to those who have the most urgent need to use the telegraph?"

Mr. HUBBARD. It makes a pretty long title, Mr. Orton.

Mr. ORTON. Then we will make the title shorter, and put the real purpose of the bill into the first section. I have not contrasted the present night-rates of the Western Union Company and these priority rates under this bill, because that would not be quite fair, but it is proper I should call attention to the fact that this bill proposes a night-rate that is somewhat lower than the average night-rate now in force. But is it sufficient that a scheme of this kind, involving grave questions affecting private rights and public policy, is it sufficient that such a scheme should merely provide as well for the public, by the aid of Congress, as has been done already by private parties, without any such aid? These rates, the bill declares, shall cover the cost of immediate delivery within a half mile of the telegraph-office, or within the letter-carrier delivery.

Mr. MERRIMON. What is the difference between your rates of the ordinary grade and what they would be under this bill?

Mr. ORTON. The Western Union rate is 25 cents for twenty-five miles, 30 cents for fifty, and 40 cents for one hundred miles. The rates under this bill would be 25 cents for a hundred miles. We have three rates: 25 cents, 30 cents, and 40 cents, under a hundred miles. The first hundred miles would be 25 cents under this bill. There is a difference, generally, in favor of the rates in this bill, if we leave the question of priority out of the case. But it is impossible for me, in view of my experience in the business, to leave that out of the question, believing, as I do, the inevitable result would be that more than 50 per cent. would be sent at double rates.

Mr. MERRIMON. Your idea is, that Government is obliged to yield to that demand for priority rates?

Mr. ORTON. I did not intend to say that the Government should do so in the manner provided by this bill. I incline to believe that the priority plan, as provided by the Western Union Company, is the only one that the public requires or will acquiesce in; that is, that each customer may elect for himself whether he will take his chances with the general business of the day, or whether he will wait and accept the delivery of his message the next morning at half-rates. I incline to believe that that is the most practicable priority plan.

Mr. MERRIMON. Is it your opinion that it is necessary to the telegraph system?

Mr. ORTON. Do you mean a scheme of priority?

Mr. MERRIMON. Yes, sir.

Mr. ORTON. It may not be absolutely necessary, but it seems desirable for two reasons, in my judgment.

First, because it promotes the convenience of that class of people who desire prompt service without inconvenience to any other class.

Secondly, it promotes the interest of the telegraph companies, for this reason: We are obliged to provide facilities equal substantially to the maximum demand of the busiest hour of the twenty-four. Now, if we can utilize these facilities to some extent during all the twenty-four hours, we shall certainly increase our profits on the capital invested, because we shall get more work out of a given number of miles of wire, if we can use them, sixteen, eighteen, or twenty hours a day, than if we have to confine that use to eight or ten hours. One of the vices of telegraph business, so to speak, is that we must invest capital to provide facilities for handling, with reasonable promptness, the bulk of the business during a few hours in the middle of the day. Now it costs no more for rent or maintenance, it may be a little more for gas and fuel, but that is scarcely appreciable on a message, whether we work the wires twenty-four hours or only ten hours. The expense, then, that enters into all the new business created by the offer of half rates at night, is limited to the wages of the operator and to the battery consumed. The wages of the operator are the same; indeed, it is claimed that it costs somewhat more at night, because we pay the same wages for fewer hours service than we do in the daytime. It is not expected that night-operators will be worked more than seven to eight hours, as against nine to ten hours in the daytime. In that connection let me call your attention to the fact that the employes of the departments in this city—I don't know how it is about the Post Office—are not required to work more than eight hours.

Mr. RAMSAY. That is the time the Government employes work in the arsenals, navy-yards, and other public workshops. I do not know how it is here.

Mr. HAMLIN. Here they don't work but about six hours?

Mr. ORTON. I was aware of that, and if they only violate the law 25 per cent. that is doing pretty well for these times; but I wanted to know if they could be required to work more than eight hours without additional compensation.

Mr. HAMLIN. No, sir.

Mr. ORTON. I merely ask the committee to consider what would result from increasing the compensation paid to telegraph-operators to-day from 25 to 33½ per cent. for the additional hours of service which Government employes would have to render in order that the same number now employed by the telegraph companies should do the same work. The Western Union Telegraph is expending more than \$3,000,000 a year for salaries—most of it to operators.

Again: The post-offices are closed absolutely to the public on Sundays and holidays, with the exception of a few minutes, morning and evening. The telegraph offices in the principal cities in the United States are accessible to the public every hour of the year. This is not true of the smaller intermediate stations, but at all the large cities in this country a customer, if he will take the pains to go to the operating-room, at any hour of the day or night, will always find some one there who will receive and send a message to any one of the other principal cities. You may answer, the Government would have to do the same thing. But would it? That is the question; and it is a proper question for the committee to consider. If it would do it in respect to the telegraph, why does it not now do it with respect to the post-offices? If it will not deliver letters at 12 o'clock at night in New York, why should it deliver messages at that hour? Yet this is what the telegraph companies do every night in the year. In this connection, permit me to read an extract from a recent review of the report of the Postmaster-

General that expresses my opinion on the subject of comparative official and private efficiency :

Has our Government, or that of any of the States, ever opened a turnpike, dug a canal, constructed a railroad, built a ship, erected a building, or managed any business more efficiently or economically than private parties would have done ? Is it not an admitted fact that, as compared with private enterprise, all Government work is in a greater or less degree dilatory, wasteful, and extravagant ? And is it possible to produce a different result under an elective system ? No civil-service rules touching character and competency, however faithfully administered by men indebted for their own positions to personal and political favor, will ever be as successful in securing the fittest agents to have charge of intricate and delicate business operations as that instinct of self-interest which governs men in the conduct of their private affairs.

Concerning the provisions of this bill which relate to the service for the press, I will only remark that, perhaps if any legislation on the subject is attempted, that which is herein contemplated is as explicit as it can be made. It is a service for which no statute can adequately provide.

When I was interrupted last I was about to ask Mr. Hubbard a question ; for between what is expressed in this bill and what is implied, and what is possibly inferable from it, I am somewhat in doubt in respect to what is really intended. Does this bill contemplate that the free delivery of messages for which it provides shall be made at the expense of the Government ?

Mr. HUBBARD. Yes, sir.

Mr. ORTON. Then I have to say that the Government will assume a very grave responsibility as well as a very large expense.

I read very hurriedly last night, and will not attempt to take up the time of the committee, at this late hour to-day, to discuss it, a communication from the Postmaster-General, replying to certain inquiries put to him by the House in December last. But I will say now that the idea that it is possible to utilize the present carriers, say in the city of New York, for the delivery of any messages save those which arrive during the night, and are deliverable on the first round of the carriers in the morning, the half rate messages, is utterly impracticable. The people, in my judgment, would not stand that kind of service one week. A carrier will start out with as many letters as he can carry to be occupied at least one hour with their delivery. Somebody must wait an hour from the time he sets out before his mail is delivered ; and I incline to think that, in respect to portions of the city, it must take a longer time.

Now, it may happen, and it does sometimes happen, that a message will, from some accident, be delayed an hour in its delivery in the city of New York, but to do this, as a regular thing in respect to a portion of the telegraph business of every day, would ruin any company that should undertake it in a month.

The expense of special delivery of messages in large cities is very great. The telegraph companies have a complete system of free delivery in the city of New York to-day—a free delivery of messages below the Central Park—and that has been in operation for two or three years. It is a very expensive service. It involves the employment of as many messenger boys for this service alone as the Post Office Department has provided letter carriers for their delivery service. The mail from down town to be distributed is taken up town in a wagon. Now it would certainly amuse those connected with the telegraph to contemplate the delivery of messages up town in a wagon. It has cost the Western Union Company, for several years, an average of 2½ cents per message for delivery. In the large cities the cost ranges from 6 to 10 cents. At

country stations the cost of delivery is so great that a special charge is made to cover the extra cost. If the telegraph were connected with the Post Office, and free delivery of messages within half a mile stipulated, there are thousands of stations at which the cost of delivery would be more than the postal revenues. Yet the compensation provided by this bill for free delivery—for all the clerical labor of receiving messages, keeping the accounts, making out returns, providing blank forms and other stationery, furnishing stamps, and receiving and paying over the proceeds, providing office room, warmed and lighted, is a "postage" of 5 cents a message.

FIFTH DAY.

JANUARY 22, 1874.

Mr. ORTON. Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: At the conclusion of the discussion yesterday we were considering the details of the bill in respect to rates as compared with the rates charged by the companies now carrying on the business, and also the provision requiring the Post-Office Department to make a free delivery of messages within half a mile of each postal-telegraph station.

In respect to the provision for priority messages, I have shown, first, that a majority of telegraph messages are of that class which would claim the priority privileges of the bill, and that the priority rates named in it are considerably higher than the rates of the present companies for a like class of business.

I now invite attention to section four of the bill, which says ;

That the Postmaster-General is hereby authorized to contract with the Postal Telegraph Company for the transmission of correspondence by telegraph as his agent for that purpose, according to the provisions of this act, such contract to be terminable at the option of Congress.

I am unable to say whether this language, this peculiar language, is employed by accident or by special design. It confers upon the Postmaster-General *authority* to make a contract with the proposed company ; but neither in this section nor in any other, so far as I can discover, is there any provision *requiring* him to make such a contract. If, therefore, it should be the opinion of the Postmaster-General, as I believe it to be the opinion of the present incumbent of that office, that it is inexpedient to make this contract, he is not required to do so. But even in that case the company would have received certain valuable rights and privileges from Congress, by which it might be enabled to start in the business under more favorable auspices than if organized under the laws of any State.

Now, as I have before stated, it seems to me unfair that the Congress of the United States, in legislating upon a subject of such great importance to a considerable number of people in all sections of the country, should discriminate against those who for more than twenty years have, by the investment of capital and labor, brought this business up to the present high degree of efficiency, and in favor of those who had no experience and have now no investment in the business ; who give no pledges, who tender no security, and who are asked to provide, so far as the bill is concerned, no guarantees whatever that they will ever embark in the business. If the corporators named in this bill desire to engage in the telegraph business, they can organize under the gen-

eral laws of any one of at least a dozen States. If they can obtain the requisite capital they can acquire the control of all the existing lines by purchasing their stock in the open market. Having this right, having this ability, why should Congress be called upon, urged, solicited to give them these other rights which in proportion as they are valuable to the beneficiaries, will be damaging to the property and business of existing companies?

The section further declares, "the Postmaster-General shall furnish suitable accommodations at each postal-telegraph office." Whether that means that he shall furnish only accommodations within the post-office as now established, or shall furnish all the facilities, all the accommodations, that the present and prospective business of the public require at every town or city, the bill does not clearly state. Yet the difference between the two constructions to which this clause is liable involves a large sum of money, and if it is not intended that the company shall be liable for its payment, then the exemption should be made too plain to admit of any doubt.

Again: "Said company shall have the right to construct lines on all post-routes, and shall provide lines of telegraph to every postal-telegraph office." Is it intended by this clause that a right of way shall be taken under the right of eminent domain which belongs to the Government, a right of way through, upon, and over the lands of private corporations and of individuals and donated to the persons named in the bill? If the Government has no right to take lands for its own use without compensation and without making provision for compensation, clearly it has no right to take and bestow them upon private parties. Yet that is what this clause seems to contemplate.

Let me illustrate the possible effect of this clause upon the rights of railroad companies. The New York Central and the Pennsylvania Railroad Companies have been engaged for a year or two in putting down additional tracks. They have been obliged to purchase a strip of land 50 to 100 feet wide, by the side of what they owned before. The telegraph-poles were standing along the outer edge of the old right of way. It became necessary, in order that these additional tracks might be put down, that the telegraph-poles along the roads should be removed from the former outer line of right of way to the outer line of the new right of way. Under the existing arrangements between the Western Union Company and those roads it was held that we were bound to remove our lines at our own cost, and we have done so at large expense. But if we had held our rights along those roads under an act of Congress, that gave us the right to build lines upon any right of way not in actual use of the railroad companies at the time we entered upon them, clearly we could not have been compelled to move our poles and wires on notice from the railroad companies that they desired to lay down additional tracks. If we had the right to go there without their consent and against their protest, then we may remain without their consent, or dictate the terms on which we will consent to remove.

I am confident that this committee will not advise Congress to enact a law that proposes to take from railway companies lands which they have purchased in many instances at great cost, and bestow them upon the Postal Telegraph Company without requiring compensation to be made to the owners, and without providing for vacating such lands whenever the railroad companies require to occupy them with additional tracks.

Although this sentence declares that the company shall provide lines of telegraph to every postal-telegraph office, there is neither in

this nor in any other provision of the bill anything that requires it to be done within a stipulated time. Now, it is the common practice of the State legislatures in creating corporations and conferring upon them valuable privileges, to require that they shall not only organize and enter upon the work for which they are created, but that they shall accomplish some specific portion of that work within a fixed time. I believe that has been the custom of Congress, in respect to grants of lands to railroads; such grants have been conditioned upon the construction, completion, and operation of so many miles within one, two, or three years, and so many miles per annum thereafter. This proposed telegraph company, however, may secure its peculiar privileges by merely organizing. It may then hold, without exercising them, until Congress, by a new act, requires them to proceed; but it is not probable that Congress would withdraw the grants until the grantees had been afforded a reasonable time in which to commence work, and then so long as progress was being made, however slow it might be, there would be no justification for withdrawing them. I claim, therefore, that if it is contemplated to pass a bill of this kind, that provision should be made, first, for compensation to owners of lands authorized to be taken; and second, that some limit should be fixed, some condition should be imposed, as to the time within which they should begin work, and what should be accomplished within that time.

Section five declares "That the Postmaster General shall provide stamps and stamped paper." I have nothing to add to what I said yesterday on the subject of requiring prepayment by stamps—of making prepayment by stamps compulsory. As the bill now stands, no clerk of the post-office would be authorized, in whatever emergency, to receive money from a customer in payment of tolls on a message. Now, as to the expense of this provision, it may be little or much. I simply call attention to it because it is one of the innumerable items of expense incident to the business which, it is proposed, shall be charged to the Post-Office Department.

Again: "All persons shall have the right to correspond by telegraph in the manner herein prescribed." If it is necessary that Congress shall devote time to the enactment of laws giving to the public the right to send messages by telegraphic lines, now or hereafter in existence, I make no objections to this provision.

"Telegrams shall be privileged communications in law to the extent that letters now are." That raises several questions. To what extent are letters now privileged communications? With a few unimportant exceptions—unimportant so far as the consideration of this question is concerned—letters under seal are privileged communications; but, after the seal has been broken by the party entitled to open the letter, as I understand it, it ceases to be a privileged communication. That is, circumstances may arise under which the production of an opened letter can always be compelled by the courts. Now, a telegram is not a sealed communication. It is an open letter all the time it is in custody of the company. At the station where the message is received it is always open, although the copy at the other end may be delivered under seal. We have taken a great deal of pains, and have been to considerable expense to endeavor to induce the courts in different States to hold that telegrams were privileged communications, and ought not to be produced in court; and, although I have been able in some instances to secure some protection for the messages, to prevent their going upon the records of the court, I have not been able, in a single instance, to prevent their production when so ordered by the courts.

Mr. MERRIMON. I remember a case in which you would have been in peril if you had been within the jurisdiction of the court, wherein it was said that you had caused certain telegrams to be removed to prevent them from being offered in evidence. It was in a celebrated case in my State—the impeachment of the governor.

Mr. ORTON. Was it alleged that the telegrams were removed after service of the order to produce them?

Mr. MERRIMON. The agent was summoned to produce them, and he said that he had been ordered by you to send them to New York.

Mr. ORTON. After the subpoena was served.

Mr. MERRIMON. Yes, sir.

Mr. ORTON. I am confident that so far as my action was concerned, if I took any, you have either been misinformed or else I did not know the facts. I cannot now recollect that I had anything to do with the case.

Mr. MERRIMON. The counsel for the prosecution questioned very much at the time if it was so.

Mr. ORTON. We endeavor by all proper means to keep our offices from being turned inside out, and their contents made public.

Mr. MERRIMON. The question as to how far these telegrams were privileged was very fully discussed then, and as to whether the company was privileged to withhold them from the court.

Mr. ORTON. The agent of the company having them in charge would not be justified in withholding them after the service of an order to produce them. It is the practice of the company to gather and destroy all messages from time to time.

Mr. RAMSEY. Have you a uniform practice, a rule, as to the keeping of your messages?

Mr. ORTON. Not a uniform rule. We require that they shall be destroyed within two years. Sometimes they are destroyed within a shorter time if there is not a convenient place to keep them. They accumulate very rapidly in large offices. The process of destruction is to pack them securely and send them in charge of a trusty agent to a paper-mill, where he sees them turned into the vats and reduced to pulp.

Mr. HAMLIN. Have the courts determined how far the company is protected against divulging them?

Mr. ORTON. We have never been punished for refusing to divulge, nor prosecuted for divulging.

Mr. MERRIMON. There was a case a few years ago in which an operator was imprisoned by the House for refusing to produce the telegrams of private parties.

Mr. ORTON. I do not think he was imprisoned.

Mr. MERRIMON. Kept in custody.

Mr. ORTON. Some reporters were kept in custody, but the other parties were discharged. The operator was not in custody for refusing to deliver up messages, as they were not in his custody. They had been returned to the senders. It is our practice to return originals of press-messages when requested to do so, retaining merely a memoranda of the number of words. What was desired at that time was a copy of the treaty, was it not?

Mr. MERRIMON. No, sir. It was an investigation of fraud. It was claimed that a certain man's telegrams would be a strong point against him if produced. The operator was ordered to produce the messages, but he declined to do so. The matter came before the House. He was

brought to the bar of the House, and my recollection is that he was held in custody for a considerable time.

Mr. ORTON. When was this?

Mr. MERRIMON. Some three or four years since. I cannot remember the particular matter.

Mr. ORTON. I do not remember any case of that kind.

Mr. MERRIMON. Yes, there was such a case.

Mr. ORTON. If an operator was in custody by order of the House, I think it was not one of our men.

Mr. HAMLIN. I think you have answered me; but let me state it another way. Has there been any case, in your knowledge, either in your company or any other, where the agent of a company, being under a subpoena called into court, refused to go, claiming that their communications were not subject to the order of the court; and has the court given an opinion that the company was not liable under an order to produce papers?

Mr. ORTON. I will have to make separate answers to the different inquiries. There have been cases where we have refused in the first instance to obey the order of the court, and we have employed counsel to argue the cases. I think, in one instance, on account of the remoteness of the office and delay on the part of our agent, he was ordered into custody by the court; but in no case has a court held that messages were privileged communications. In all cases, after the decision of the courts, we have produced what they called for, if in our power to do so. Whatever resistance has been offered on our part has not been made for the purpose of thwarting justice, or to embarrass the courts, but to prevent the unnecessary exposure of the private affairs of our customers, and to give evidence to the public of our willingness to be subject to trouble and expense to prevent a betrayal of their confidence. It would be injurious to any telegraph company, if the opinion should prevail that it would readily furnish from its files any information litigants might call for.

Without intending to be disrespectful to any court or other tribunal authorized to compel the attendance of witnesses and the production of papers, I prefer to incur the risk occasionally of punishment for contempt, than to obey orders to produce messages which our examination shows do not relate to the case pending, without explanation or protest. I am inclined to believe that sham proceedings have sometimes been commenced in court for the sole purpose of getting at the contents of private messages.

The remaining provisions of section 5 seem, so far as I comprehend their meaning, to be judicious. I have not examined the statutes, nor the decisions under them, sufficiently to enable me to form a definite opinion as to what is the effect of the declaration in law, that all telegraph lines operated under the provisions of this act are thereby declared to be post-routes; but I see no objection to that declaration. As to the penal provisions, I think they are well considered. The present companies labor sometimes under serious disadvantages, because of the fact that we depend wholly upon State laws for the punishment of interference with posts and wires. In some States there are either no provisions of law at all on the subject, or such provisions as are wholly inadequate. It is very rare that we have been able to punish any person for maliciously interfering with our wires.

Section 6 contains the provision to which I referred yesterday, in respect to the exemption of the property and the business of this company from State and municipal taxation. You will remember that I

stated certain large sums which the Western Union Company had been obliged to pay within the past few years for taxes. I claim that the enactment of such a law as this in respect to a company that has not been engaged in the business, and that now furnishes no pledges that it ever will engage in the business, is unfair to the companies that have been conducting the business heretofore.

In section 6 I find the following: "Every postmaster shall, on the second Monday of each month, forward to the Postmaster-General a statement of the number of telegrams transmitted to his office during the previous month, and the stamped value of each telegram, and the number and amount of stamps sold at his office, and all money received for telegraphic service."

I call attention to this clause merely because it is another of the items of expense which the private companies are obliged to defray out of their own revenues, but which this bill proposes to make a charge upon the public treasury. All the expenses of receiving messages over the counter, furnishing, taking care of and selling the stamps wherewith to pay the tolls on messages; all clerical labor in respect to records, the accounts and returns required to be made, are to be paid by the Post-Office Department.

Section 7 names the corporators in the bill, of whom there are twenty-five, and provides that the first three corporators, or a majority of them, which is two, shall act as commissioners to receive subscriptions to the stock of the company. "When the whole amount of stock shall have been subscribed, said commissioners shall give notice of the time and place for holding a meeting of the corporation by publication in two daily newspapers printed in the city aforesaid, and mailed to each subscriber at least thirty days before the meeting."

The next sentence opens with this declaration: "The stockholders shall then elect not less than twelve nor more than twenty directors, to serve until the annual meeting." Prior to this meeting they were subscribers; now, however, they are called stockholders. Did they become stockholders merely by the act of subscribing?

I pass to section 8 in order to bring one of its provisions into this connection: "The capital stock of said company shall, at its organization, consist of ten thousand shares, of the par value of one hundred dollars each, *to be paid up in cash.*"

As I remarked in respect to another section of this bill, whether a certain looseness of style is accidental or designed, I am not able to say; but I want to show the committee that this bill, as now framed, enables twenty-five gentlemen to become a corporation with most extraordinary powers, entitled to enjoy most extraordinary privileges, without the payment of one single dollar. Let us see. First, they have the right to subscribe for the stock. Then notice of a meeting is to be given to the "*subscribers.*" They are then to come together. The three commissioners having had no authority to assess the "*subscribers,*" have not, of course, collected any money, and it is to be presumed, therefore, that no money has been "*paid up*" or down.

They are only "*subscribers*" before they meet, but at this meeting the law recognizes them as "*stockholders,*" and although it is provided in a subsequent section that the capital of "ten thousand shares, of the par value of \$100 each," is *to be paid up in cash*, there is no provision requiring the payment of one single dollar prior to the birth of the corporation, endowed with the right to acquire and exercise a perpetual monopoly of all the telegraph business of the country. But let us assume that this million of dollars is to be paid up, and at some time is

actually paid up, either out of the pockets of those who subscribe or out of the proceeds of business-profits which may be realized from negotiations hereinafter authorized. I say assume the capital to be actually paid up in cash, what then? There is no requirement in this bill that one single dollar of that million shall ever be applied to the purchase of property to be used in the business of this corporation. They are not obliged by this bill to invest a single dollar of that million in any telegraph property, because you will see further in section 8: "The said company may purchase any lines of telegraph that are in operation in the United States at the date of the approval of this act, on such terms as may be agreed upon." And the last paragraph of this section provides: "The company may also construct all necessary lines for the transmission of telegrams under the provisions of this act, *and, from time to time, increase its capital stock to an amount equal to the actual cost of lines and equipment so constructed.*" Prior to this, in the same section, provision appears to be made that in case the Western Union Company shall make a tender to the Postal Telegraph Company of its lines, at a value to be ascertained by five arbitrators appointed in the usual manner, then, after the award has been made, the amount of such valuation "*shall be paid in cash, or stock, if agreed upon between the parties.*" Now, I always supposed that agreements to pay were conditions precedent to arbitrations, and that after you had agreed to arbitrate to ascertain a sum payable, that whatever sum the arbitrators found was thereupon to be paid. But this arbitration is of an unusual character. The arbitrators are to be appointed in the usual way; two by each party, and an umpire by the four; then, "if agreed upon between the parties, on delivery of the deeds thereof, conveying a good and satisfactory title to such property," the amount shall be paid in cash or stock.

There is another doubtful point just here. "On delivery of the deeds thereof," &c. There is not a telegraph company in the United States that can give any deed of its property. The ownership and control of corporate property is represented by shares. It is not competent for a telegraph company to give a deed except for some real estate it may own in fee. I have a right to ask, what does this clause of this section mean? Is it a delusion and a snare? On the surface it appears to be a provision to require the new corporation to purchase, at an arbitrated value, the lines and property of companies that are to suffer by its competition, if any such companies shall elect to sell their property, and retire from business rather than incur the risks of such competition.

It appears to require this company to make this purchase, although, as I have previously stated, I do not see how Congress can compel them to pay for it unless it appropriates the money out of the Treasury.

But this peculiar clause to which I call your attention, first, attaches an unusual condition, a sort of option, to follow an arbitration, and, secondly, superadds a requirement in respect to deeds and titles that it is impossible to comply with.

There are two provisions for the increase of the capital stock: First, "it may increase its capital by the issue of stock equal in amount, at its par value, to the cost of such lines." That means the lines acquired by arbitration, as provided in the preceding sentence. And second, "the company may also construct all necessary lines for the transmission of telegrams under the provisions of this act, and, from time to time, increase its capital-stock to an amount equal to the actual cost of lines and equipment so constructed."

Taking all these provisions together this appears to be the result:

First, that the capital is a million dollars, *to be* paid in cash; second, that it may issue additional stock equal to all the lines purchased or constructed thereafter.

Even if the money was in the treasury on the day of organization, there is nothing whatever in the bill to prevent its immediate distribution; not, necessarily, among the directors alone, because there is a provision in one part of the bill that each of the corporators therein named shall be entitled to subscribe for his proportion of the capital-stock. There are twenty-five corporators, and therefore each one is entitled to subscribe for one-twenty-fifth of the capital-stock. At the election they can elect but twenty directors; not less than twelve. The distribution would then be among the subscribers of course.

Now, I am not questioning the right of Congress to provide a scheme under which twenty-five gentlemen may collect from the public a million of dollars and divide it among themselves. I take no exception to it on that ground. But if Congress contemplates authorizing the raising of a million dollars, to enlarge telegraph facilities, let me suggest that if that sum were bestowed upon the companies now conducting the business it would produce, within the same time, as valuable results to the public as can, by any possibility, be produced by the company to be created by this bill.

Again, section nine says, "The company may, at its own expense, establish and maintain telegraph-offices for the reception, transmission, and delivery of telegrams, independent of those established by the Postmaster-General, as herein provided." It "*may*" do so.

So far as that provision goes, I take no exception to it. But I have previously stated, in respect to section 4, that it is mandatory upon the Postmaster-General to furnish suitable accommodations at each of the postal telegraph offices, and that it may be held that he shall furnish suitable accommodations for as many stations in any city, in addition to those which are established at the post-offices, as shall be required for the accommodation of the public. Now, if this clause should declare that the postal telegraph company "*shall*," at its own expense, &c., using the same phrase that it used in respect to the Postmaster-General, then both declarations would be explicit. We would understand that the Postmaster-General was limited to the expense of providing accommodations within buildings provided for post-offices, and that the company should provide, outside of that, at its own expense, the further accommodations that may be required. As the bill is drawn, it is competent for the company to claim that it is the duty of the Postmaster-General to do it; while, on the other hand, the right to do it is conferred, but without any obligation to exercise it.

The remaining provisions of the bill do not appear to me to contain anything that is material. The bill as a whole may be fitly characterized as a scheme to enable the persons named therein to acquire, by private negotiation, possession and control of the telegraph lines and property within the United States, at their convenience as to time, utterly regardless of public convenience or the expense to the treasury; and that, after they have acquired this control on better terms than it would be possible to do it to-day, because of the constant, standing menace of this bill toward the owners of the present property—I say, after they have acquired it, there is no obligation on the part of the United States to enter into the arrangement which the bill appears to contemplate. The Postmaster-General is "*authorized*" to make the contract, but he is not obliged to do it. It may happen, then, that the only result of its passage would be to give the prestige of a con-

gressional charter, the special benefit of an expectation of intimate relations with the Government, and large profits to be derived from such relations, to these people to enable them to become established in this business, and then to leave them simply an ordinary telegraph company to conduct business in the ordinary way and in competition with the existing companies.

I claim that such proceeding would be an unfair proceeding on the part of Congress; and that there is nothing in the present condition of things to justify it. Mr. Hubbard has admitted very frankly—and is entitled to my thanks therefor—that in no country in the world have so great reductions in rates been made during the last five or six years as in the United States. He might have added—and perhaps he did, as I do not now recollect all that he said on that point, that in no country have so great extensions of telegraph facilities been made within the same time as in the United States, and that they have been made without the cost of a single dollar to the public treasury.

It is true that I have stated, in a communication to the New York Herald, three months ago, that further reductions of rates “will not be made by the companies now doing the business for some time to come;” quite true, and I repeat it here; simply for the reason that the revenues have not yet recouped from the last reductions, and I fear they will not for a year to come. Having established a system of rates that compares favorably with any system of rates over like areas in the world, I am inclined to think the public have no cause to demand any further reductions at present. I believe, however, it will be possible for the existing companies, by the increased facilities they will provide in the future, to make further reductions in rates. I am quite confident of that; although, at the same time, I must say that I do not coincide in the views of those theoretic philosophers who talk about sending messages, by wire, at the rate of 3, 10, or 15 cents a message. That condition of things will not be reached in many years, if, indeed, it is ever reached at all. Large quantities of matter cannot be sent by telegraph at merely nominal rates. I believe it to be just as impracticable to do any considerable portion of the postal business of the country by wire, as it would be to establish a successful competition with the express companies by the use of carrier-pigeons.

MR. SAULSBURY. If it will not interrupt your argument, I would call attention to one fact. I understand that where messages start by your company, going not only over your lines, but those of other companies, that there is no arrangement now between such companies, so that a telegram shall not cost beyond what is right and fair; that each company acts independently, so that the cost is much more than it would be for the same distance over one line. Can there not be such an arrangement? I was invited to dine with a friend Thanksgiving, distant thirty miles, and I announced by message declining, not exceeding five words, at a cost of 75 cents. They gave as a reason for that price that it had to go over two lines. The message was handed to a Western Union operator in my own town.

MR. ORTON. There is no arrangement between the companies relative to such cases. The Western Union Company collects the tolls on messages handed to it according to our scale of rates. These rates, as I have already stated, are based upon air-line distances, computed from the place where the message is received to the place at which it is to be delivered. For example, there is an “opposition” wire from Norfolk to Petersburg, where it connects with the Southern and Atlantic, another “opposition” company having wires running to Richmond and

Washington. Now it may happen that a customer will deliver a message to the "opposition" line at Norfolk, addressed to some station near Washington, reached only by the lines of the Western Union Company; that message, when delivered to the Western Union Company, would be received and charged for by the Western Union Company as if it originated at Washington. The reason for this is very simple, and I think you will agree with me that it is also very just. It is the practice of the smaller companies—that is—those covering but a limited extent of territory to conceal from the public the fact that they can send messages to but few points by their own lines. They announce to the public that they can send messages to any point in the United States that is reached by the Western Union wires. They take messages at places where we have offices and forward them as far as possible by their own wires, and then hand them over to us, paying us our rates to destination, and retaining the balance. Now I can conceive of no reason why we should be called upon to prorate with our competitors in respect to business over our lines from places where we have offices, and when the customer, if he had known that the company to which he gave his message could not forward it to its destination would undoubtedly have given it to us in the first place. If the Baltimore and Ohio Railroad should solicit at Pittsburgh freights for New York in competition with the Pennsylvania Railroad Company, which operates a road to New York, when the former delivered to the latter at Philadelphia goods destined for New York, the Pennsylvania Railroad Company would charge the Baltimore and Ohio the local rate between Philadelphia and New York. If the shipper or consignee liable for the freight charges is obliged, in that case, to pay more than if he had shipped by the company controlling the "through line," I don't see how he can justly blame the latter.

Mr. MERRIMON. I remember a case that illustrates the point of Mr. Saulsbury's question. I was sending a telegram from Raleigh, N. C., to Abbeville, S. C. When I went to the telegraph office they told me that they could send it to Columbia, and then it would have to go on the other line. I found that the increased charge (I don't remember what it was exactly) was very large. It was about twice; I paid double.

Mr. ORTON. Very likely. You didn't take the message to one of our offices?

Mr. MERRIMON. No, sir; I paid the charges on your line, however, and also the charges on the other line.

Mr. ORTON. Undoubtedly; let me illustrate further. There is a line of forty miles from Pollard to Pensacola, that is not in our system, and the tolls on the short-line are \$1. Now while, according to our scale, a message from New York to Mobile is \$2, and would be \$2 to Pensacola, we collect another dollar at New York on messages for Pensacola, and pay it over to the short-line, the proprietor of which claims that he has an exclusive right from the State of Florida to operate a line between Pollard and Pensacola.

Mr. HAMLIN. Are there not some short lines with which you have arrangements?

Mr. ORTON. With all those belonging in our system; that work with us under present arrangements.

Mr. HAMLIN. For instance, a short line is constructed by individuals, they own the stock and the line, but you pay the men upon it and do the work.

Mr. ORTON. We have a great many such lines, and are adding to them every year. We make this standing proposition to all communi-

ties. If our lines run through your towns, we will open a station there upon a guarantee against loss; or we will build a line out to your town five, ten, twenty or fifty miles, under some arrangement by which you advance the money and allow us to pay all or part of it back in telegraphing.

Mr. MERRIMON. In view of the vast facilities that you have for making new lines and the capital that you have already invested, what motive is there for these smaller companies to establish lines on their own account?

Mr. ORTON. I am glad you have asked me that question, not because my answer will relate especially to the bill before the committee, but because it bears directly upon the general subject of the motive for constructing competing lines. There was doubtless a time when the motive to subscribe capital to be used in constructing telegraph lines between points reached by other lines was to secure a reduction of rates. But that time has passed. The experience of the last six years, during which no "opposition" line of any extent has been able to realize profits—some of them having been obliged to sell out at a loss to prevent suffering a greater loss by going on—has demonstrated that profits cannot be made at present rates except by an extent of lines far greater than any such companies possess. The real motive for getting up new telegraph companies is the profit which their projectors expect to make out of contracts for the construction of the lines, or from commissions on sale of stock, or both. The benevolent professions of a desire to protect the public from "extortion" and the oppression of a "great monopoly," by inducing them to purchase stock that will never pay dividends, nor return the money invested, are entitled to the same respect as the advertised communications of the "all-healing" remedies so modestly set forth in the "family almanac."

Facts have come to my knowledge which show that sales of stock of a new company have been made by applying a part of the proceeds to the payment of dividends on the stock previously issued, although no profits had been earned, and at the same time a prominent officer of the company was receiving a large commission on all new sales.

The Western Union Company can take control and operate the lines of all the other telegraph companies in the United States without increasing its own expenses. On the contrary, we could undoubtedly reduce the expenses in some cases. I have now in mind the case of a city where we recently took in the lines of a competing company, and by closing offices not needed for public convenience, and cutting off other unnecessary expenses, we were able to reduce our own previous expenses, and add the whole of the receipts of the other line to our profits.

Now, I presume, Mr. Hubbard will seek to make out of this admission a point in favor of his scheme. But I shall not withhold or misrepresent the facts on that account. If, however, the Western Union Company should acquire all the other telegraph lines in the country, the same results would follow substantially, and their profits would be increased without any diminution of convenience to the public. But there would be no end of noise about the grasping tendencies of the "great monopoly," which, during the last five years, has doubled its facilities, increased the volume of its business from less than six millions of messages a year to sixteen millions a year, and its gross receipts from six millions a year to more than nine millions a year; while its net profits during the last year were less than they were seven years ago.

Mr. MERRIMON. I understand you to say that there is no legitimate motive to construct such lines?

Mr. ORTON. None whatever.

In the remarks of Mr. Hubbard the other day, he commented at some length upon an alleged relationship between the Western Union Company and the press of the country. I invite the attention of the committee to what I have to say upon that point, not so much on account of the statement made as the liability to draw erroneous inferences if I should omit to notice the statements.

There is an organization in the city of New York called "The New York Associated Press." It is composed of seven papers, viz: The Herald, Tribune, Times, World, Sun, Journal of Commerce and Express. The proprietors of these papers although competitors in respect to circulation and advertising, have formed a partnership for the collection of news to be used in common, the cost of which is to be borne ratably. All other papers in New York which receive the Associated Press news are obliged to purchase it from this association. The Evening Post, Commercial Advertiser, and some other papers, not members of the association, are permitted to receive the news on payment of a stipulated sum, which is, I presume, much less than it would cost to obtain it in any other way.

There is, also, in the New England States an organization known as "The New England Associated Press," being an association of the proprietors of papers in those States south of Maine, possibly including some papers in Maine. There is also a sub-association of the New England association, which is furnished with a condensed report of its news.

A third organization is "The New York State Associated Press," embracing the papers in New York State, one or two in Northern Pennsylvania, and one or two in Vermont.

The next association in order, and it should be properly ranked second, is "The Western Associated Press," with headquarters at Chicago. It embraces the territory and serves the papers published within a section of the country bounded by the cities of Cleveland, Pittsburg, Cincinnati, Louisville, Saint Louis, and Chicago. Within this territory is a sub-organization to which a condensed report is served, not because the associated press which owns the news is unwilling to sell it all, nor because the cost of the whole would be more than for only a part except that the telegraph charges would be greater, but because the smaller papers are unable to use it at all, or have not the force requisite to put it all in type.

Another association known as "The Northwestern Associated Press," which embraces the territory occupied by the Northwestern Telegraph Company, an ally of the Western Union operating lines in Wisconsin, Minnesota, and Dakota.

Another is the "Kansas and Missouri Associated Press," which includes the papers in the States named in its title, and I think, also, papers at Denver, Pueblo, Santa Fé, and Cheyenne.

The next is the "California Associated Press," which includes the leading papers on the Pacific coast.

Last, the "Southern Associated Press," which is not an independent association, but a dependency of the New York Association, which serves the southern papers on terms arranged with them in detail. The press of Philadelphia, Baltimore, and Washington are also served by the New York Association.

The New England Associated Press, the New York State Associated

Press, and the Western Associated Press have each an agent and representative at the office of the New York Associated Press. The arrangements between the central organization and those outside are substantially these: For a compensation agreed upon between the parties the New York Associated Press places at the disposal of the local agents of the other press-associations daily all the news which it gathers from all parts of the world as fast as it is received.

These agents make up their own reports for the several organizations which they represent, and their reports are transmitted from New York to all the principal cities of the country by the wires of the Western Union Company. The news of these principal associations is also re-transmitted to the papers in the sub-associations from convenient points like Cleveland, Chicago, Saint Louis, &c.

The Western Union Company has not had for five years any contract with the New York Associated Press, except temporary agreements as to quantities and prices, which run from week to week, or month to month.

Therefore the charge that the Western Union Telegraph Company and the New York Associated Press together control the news of the world, and that the former can put a muzzle on the press so that it cannot print anything opposed to the interests or wishes of the Western Union, and in favor of the postal telegraph, is utterly groundless.

There is no stipulation, oral or otherwise, expressed or implied, between the Western Union Telegraph Company and any newspaper in the city of New York, either in respect to what they shall print on the postal-telegraph question or on any other question.

There was in force, several years ago, a contract with the New York Associated Press that contained some such provision as that referred to by Mr. Hubbard. It was in force when I came into the business.

A similar contract was then in existence with the western and the New York State associations, which is, I believe, still in force, although the specific provision referred to has long been a dead letter, and a year or so ago, when negotiating some changes in our relations with the western association, I requested their agent to draw a new contract, omitting the clause concerning the impropriety of which Mr. Hubbard is the only complainant.

It is not true that the Western Union Telegraph Company has ever cut off, or undertaken to cut off, any newspaper from receiving news because of its attitude in regard to the conduct of the Western Union Company, or of its support of the postal telegraph.

The relations between the press and the telegraph are necessarily constant and intimate. The former are valuable customers of the latter, and each contributes in no small degree to the prosperity of the other. Years of business intercourse between men whose daily dealings are mutually satisfactory can hardly fail to produce, if not warm friendships, at least mutual respect; and he must be a poor student of human nature who expects to disturb such relations, much more to break them up, by proclaiming their impropriety merely because one of the parties declines to make war on the other in the interest of the stranger, who has no substitute to offer for the benefits which he asks them to bestow upon him. Even if this matter of the relations between the press-associations and the telegraph merited the consideration of Congress, I fail to see how it is to be controlled. Neither party is represented here by any person authorized to make complaint against the other. Indeed, there are no grounds of complaint on either side. If any single fact is more clearly established than another it is that a large majority of the

leading journals of the country do not desire a postal telegraph either on the plan proposed by this bill or any other that has been suggested.

I had hoped, Mr. Chairman, to be able to finish my statement to-day, although I did claim six hours at the beginning, and the chairman was kind enough to promise I should have it. I desire to make further replies to the statements of Mr. Hubbard, and especially to some relating to the administration of the Western Union Company.

Mr. MERRIMON. I wish to say now, without meaning to imply my own opinion in the matter, that I desire to hear two questions discussed. One is, what would be the effect of the establishment of this postal-telegraph system upon the States, as making up constituent parts of the Federal Government, in view of the concentration of power in the Federal Government?

The other is, how will the Federal Government be affected by the increase of executive patronage?

Mr. ORTON. I shall be glad, if the committee desire it, to discuss both of those points, if I have the time. I have avoided the discussion of them heretofore, not because I was unwilling to take them up, but because I did not want to put myself forward as the defender of public rights, on the assumption that they were in danger of being invaded by the Government. My position is that of a person whose property is in peril, and it has seemed more appropriate for me to resist the specific encroachment, for reasons especially applicable to this case, than to seek to establish general principles for the benefit of other people. I assume that gentlemen in your positions, Senators and Representatives, will settle all political questions.

Mr. MERRIMON. You are an American citizen?

Mr. ORTON. Yes, I am an American citizen, but I am also the defendant in this case, and not the attorney for the people.

Adjourned to 10 a. m., January 23.

Mr. ORTON. Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE:

At the close of the hearing yesterday Senator Merrimon put to me these questions:

First. What would be the effect of establishing this postal-telegraph system upon the States as making constituent parts of the Federal Government, in view of the concentration of power in the Federal Government?

Second. How will the Federal Government be affected by the increase of executive patronage?

These questions are on a subject quite too vast for me to enter upon at this stage of the discussion. Yet I will proceed to answer them very briefly; beginning with the second, which, being the greater, necessarily includes the less. "How will the Federal Government be affected by the increase of executive patronage?" That means, strictly, in case of the establishing of this postal-telegraph system, which I understand to be the system proposed by this bill.

Under this bill the Federal Government has, directly, no patronage whatever. All the patronage becomes the official perquisite of the Postmaster-General. I said the Federal Government has no patronage under this bill; of course I do not mean to say that, under this bill, the employés of the Post-Office would not be increased to some extent. The expenses of the Federal Government would also be increased; but in so far as the Postal Telegraph Company furnish operators who are not, at the same time, clerks in the Post-Office, such operators are

to be appointed, theoretically at least, by the managers of the Postal Telegraph Company; and, in theory, their appointment would not increase executive patronage. But there is a provision in this bill which authorizes the Postmaster-General to withhold from the company the proceeds of the sale of stamps used for the prepayment of messages in case of any failure to comply with the requirements of the contract; if, therefore, the conduct of any employé of the telegraph company at any station should be unsatisfactory to the Postmaster-General, or to the local politicians with whom he may be in sympathy, an intimation made by him, or which he may cause to be made to the officers of the telegraph company, would be as effective in controlling removals and appointments as if the power was devolved directly upon him. In respect to the control of the employés the scheme embraced in this bill would be more advantageous than if the power of appointment was conferred directly upon the Postmaster-General; for while he could control the patronage of the telegraph whenever its control was desirable either to reward political service or to direct its results, he could disclaim responsibility for the conduct of its employés in case their conduct should give offense to any portion of the public. I presume, however, that the Senator's questions were intended to have a broader scope than that which I have given to their consideration in connection with the provisions of this bill. It was doubtless his intention to inquire what would be the effect upon the State and Federal Governments—considered separately, and, also, in their relations to each other—of the assumption by the latter of exclusive control over the property, the business, and the employés of the telegraph.

In the first place, the patronage of the Federal Government would be largely increased. That of the States would not be diminished, because they had not previously possessed it. But as patronage is an important element of power, the Federal Government would be positively stronger, and the States relatively weaker, than before.

In the next place, the influence of the Federal Government upon the internal affairs of the States would be greatly extended. A majority of the most active and enterprising men, engaged in all departments of business in every State, would be brought into intimate daily relations with Federal officials, upon whose zeal and fidelity the results of their enterprise would, in some degree, depend.

As the dependence of the people on one source of power to confer benefits increases, its indifference to the other would also increase. And thus following and stimulating the tendency—already active—to place the States in the same relation to the Federal Government as municipal corporations now sustain to the States, the telegraph might become a powerful agency in transferring to the United States the powers which the States would not willingly delegate. A Government monopoly of the telegraph might be made far more exacting and oppressive than is possible in respect to the mails. Communication by letter between distant places may be rendered difficult and unsatisfactory by official negligence; yet, so long as trains run on the railroads, it would still be possible to maintain it. But, in respect to the telegraph, it carries no passengers in whose pockets letters may be concealed, and affords no means of communication, except by the wires, which will only speak at the bidding of him who controls them.

On this point it may be said, the same control can be exercised over the telegraph in private hands as by officials. I admit it. But railroads and telegraphs are operated by their owners to make money. Their employés are appointed and retained because of their capacity to secure

this result; and satisfying the public by night as well as by day, is reasonably assured so long as there is promise of ultimate profit.

How is it with officers and agents of the Government? Chosen by political partisans, or appointed by political influence or personal favor resulting from it, neither their retention in place nor the receipt of their pay depends upon the pecuniary results of their occupations. The salaries of the officers and employés of the Post-Office are paid as promptly and at the same rates when there is an annual deficit of six millions from the operations of that Department, as if the balance were on the profit side of that account. Neglect to serve the public properly, or of official duties specifically imposed, may not be followed by dismissal if such neglect was caused by attention to political work in the interest of those whose influence put the delinquent in his place.

Satisfying the public is one of the remote considerations of a majority of officials whose appointment to or retention in office does not depend upon the good-will of those with whom their duties oblige them to come in contact. How many clerks in the post-office remain five minutes beyond regulation time to serve the waiting public who have been prevented from getting their letters by a detention of the mails? What interest have they in promoting the convenience of any number of citizens whose combined influence could not procure the removal of a single clerk, if his refusal to wait upon them after a certain hour was justified by departmental regulation? The official appointee who complies with official rules during regulation hours, and retains his standing with his political associates, has nothing to apprehend from the dissatisfaction of other people. But how is it in private business? Would any merchant retain a clerk who refused to sell to and turned waiting customers out of his store because the usual hour of closing had arrived? I make these statements for the purpose of showing that the telegraph company has one of the strongest motives, viz, self-interest, in so conducting the business as not to oppress, but to satisfy its customers, and that this motive is stronger with the employés of those engaged in private business than with the incumbents of political positions.

These remarks are designed to be suggestive rather than argumentative. As I stated yesterday, it does not become me to assume the rôle of an attorney of the people in this case. I claim that you have no right to pass the bill before you because its effect will be either to destroy the property in my charge, or compel its transfer to other parties upon terms unjust to its owners. I believe, also, that the public do not desire the change proposed, and that their interests would not be promoted by it. The political results upon the State and Federal Governments, whether considered separately or in their relations to each other, do not especially interest me, and I leave their further consideration to you.

In this connection it will not be inappropriate to make further reply to some of the statements made by Mr. Hubbard the first day of this hearing concerning the control which he alleged the Western Union Telegraph Company exercises over the press.

Let us assume, for a moment, that all he said so forcibly upon that point is absolutely true. And then, let me ask, in what particular is that state of things to be avoided by transferring the power from the hands of private parties to those of a Government official whose ruling motive (and I say it with no intent to disparage any official) is, first, to promote his own success as a public man, honorably, of course; and, second, to promote the success of the party or of the political friends by whose aid his own success was achieved?

I repeat, then, suppose it were true that the Western Union Com-

pany having the power, exercised it by discriminating in favor of one newspaper or one class of newspapers and against another class? Is there not an old, high precedent for that proceeding? Does this administration offer—has any administration, since the days of General Jackson been in the habit of offering its newspaper patronage—the advertising of post-routes, sales of unclaimed goods, the publication of the laws, &c., to papers which oppose the administration? If there are any exceptions to this almost universal rule of giving official patronage only to political friends, the exceptions are not known to me,

Here let me digress to state, briefly, a point concerning this bill and the scheme which I should have stated in another place.

If there is any justification for the enactment, by Congress, of such a law as is here proposed, it is that the public are to be benefited by it; that the people are to have more and better telegraph facilities at lower rates. I will not repeat the demonstration I have already made, that, under this bill they will not necessarily get either, indeed are not likely to get them at all. I ask, however, the attention of the committee for a moment to this point. The credit of the Government of the United States in the money markets of the world stands as high to-day as that of any other government in the world. Our Government can borrow as much money and on as favorable terms as any other government. If it is the desire of Congress to give the people of the United States the benefits of a more extended use of the telegraph at lower rates than the private parties now conducting the business are able, at present, to afford, what reason is there for incorporating a company and contributing to it a portion of the expenses of conducting its business so as to enable that company to make dividends on its capital at twice the rate of interest which the Government would be obliged to pay upon the same capital? The theory of this bill is that the capital stock is to be increased by sales, at par, to represent the cash value of the property constructed or bought. Now, certainly, it is a fact well known to every business man, that you could not sell the stock of any new telegraph company at par, even with the guarantees which it is proposed the Government shall give by this bill, unless every subscriber sincerely believed that he was to receive dividends at the rate of at least 10 per cent. per annum. I say there is not a business man in the country that does not know it to be a fact that if this bill becomes a law, and the managers of the company created by it are able to get sufficient capital stock subscribed to enable them to start in the business, it will be by the assumption on the part of those who do subscribe that they are going to receive 10 per cent. for their money.

Is it proper for Congress to embark in a scheme which involves valuable concessions to a new company, to enable that company to realize 10 per cent per annum, on the plea that it is for the purpose of providing the people better telegraph facilities, when the Government can go into the markets and borrow the same money at 5 per cent. I believe it can borrow the money on 4 per cent. bonds, especially if it is provided that those who take the bonds shall have the right to exchange them at par, for greenbacks, at any time thereafter. I have no doubt money could be borrowed at 4 per cent. on that condition.

I wish to notice, now that it occurs to me, another statement of Mr. Hubbard concerning the Western Union Company. He stated that it has at the headquarters in New York an institution called the Commercial News Bureau; and he alleged, or left to be inferred, that in the process of establishing this bureau certain private parties were ruined in their business, the rights of the public were recklessly disregarded,

and that it is now being conducted with a selfish disregard of public rights, and only in the interest of private parties.

Mr. MERRIMON. Mr. Orton, I want to put this question to you. Suppose Congress should pass a law declaring a telegraph system, just as the present postal system is established, and should provide further that the Postmaster-General might adopt any existing lines, and might let the postal telegraph service to any company or companies now in existence. Why could not your company do it as cheaply as the proposed company, or any company that could be created?

Mr. ORTON. We can do it cheaper than anybody else in the country, of course. If opportunity is offered us to compete for any valuable privileges which the Government decides to tender, we can, certainly, offer better terms than, and as satisfactory guarantees of performance on our part as anybody else in the United States.

Mr. MERRIMON. What objection would there be to such a policy as that? Would all the arguments you have made be in opposition to such a plan as that?

Mr. ORTON. No, sir; I have not intended to submit any scheme to this committee, being reasonably well satisfied with the condition of things as they are. But if I should be requested to state the modifications of this scheme that would tend to render it acceptable to the company with which I am connected, I think it would be possible for me to do so. The greatest objection I would have to taking this bill, if my name stood in the place of Mr. Hubbard's, and the names of the directors of our company in the place of the other corporators named therein, is that I should be only the chief clerk of the Postmaster-General, and no longer an independent manager of the business. That is a position I should be unwilling to occupy. I would be entirely willing to be bound by stringent laws as to the manner of performing my duty to the public, and would consent that in case of difference of opinion in respect to matters involving a conflict between the rights of the company and the interests of the Government, or the public, that such differences should be referred to arbitrators for prompt decision, with ample means for the enforcement of their decisions. But, to subject the property of the company and all the ramifications of its intricate business to the caprices—not of the Postmaster-General of to-day, but the possible Postmaster-General of some future day, would be a step I should be unwilling to take, and which I could not advise the stockholders of the Western Union Telegraph Company to take.

I return now to the point I was about to consider when the Senator's question was put to me, for the purpose of making a brief explanation in reply to the statements of Mr. Hubbard.

Soon after my connection with the telegraph business, it was ascertained that in the more important cities of the country—those of the West and South especially, and also in the city of New York—parties were engaged in supplying subscribers, previously obtained, with market reports transmitted by telegraph from the various trade centers of the country, including some foreign quotations. In New York there would be lists of subscribers to cotton reports from New Orleans, and to produce reports from Chicago.

Mr. HAMLIN. These reports would be the prices?

Mr. ORTON. Not only the prices, but the coloring of the market, so to speak.

Mr. HAMLIN. The probabilities?

Mr. ORTON. Yes, sir; to the markets, what the probabilities are to the weather. I make the statement upon personal knowledge that, while

that business was thus conducted, there were sent from the city of New York over the Western Union wires, reports purporting to be received from Europe, through the Atlantic cable, giving changes in the European markets at a time when the lines connecting with the Atlantic cables were interrupted and communication with Europe was impossible. More than that: at an expense of thousands of dollars we employed a force of detectives, whose investigations established the fact that employes of the Western Union Company and of the Associated Press were being bribed to put the messages of some of these private dealers in market-news out of their turn, and thus the markets of the chief cities of this country and the vast transactions incident to their fluctuations were largely at the mercy of reckless and irresponsible men. Now, the Commercial News Bureau was not established merely for the profit to be derived from the sale of market-reports, for the truth is, it makes very little profit directly. But it tends to stimulate the telegraph business; and it also gives the public a certain basis on which to buy and sell the products of the country. It is for our interest, not merely as a corporation, but as citizens, that the service which passes over our wires for the presumed benefit of the public shall be a correct service.

I think Mr. Hubbard stated, or implied, that we had our agents in the markets of Europe; that the Western Union Company's commercial bureau had its agents in the markets of Europe to gather up the news of those markets, that we could know the state of the markets first, and operate upon the prices. Now, the fact is, that neither the Western Union Company nor the Commercial Bureau has an agent in any foreign market. The market reports that come from Europe are the market reports gathered by the agents of the New York Associated Press, the other head of what Mr. Hubbard calls "a double-headed monopoly." They come over the cable and Western Union lines in cipher, and we don't know any more what is in them than the mail-carrier knows what is in a sealed letter. He might open it and read it, but we could not do even that, as we have no key wherewith to unlock the mysteries of these dispatches. They come to the Associated Press for publication in newspapers, whose editors cannot afford to tamper with the markets, who have no disposition to do so, and whose success depends largely upon the accuracy of their quotations.

Now a newspaper is published in the morning or in the afternoon, but the commercial business of the country is done mainly in the interval. It will take from half a minute to a minute and a half, on one of half a dozen wires, to send from New York to New Orleans the last change in the Liverpool cotton-market. It is easily done within that time. Now, then, it is a fact that, on the arrival of that quotation, a wire is taken just long enough to send to New Orleans that change in a cipher message of two or three words, New Orleans dealers waiting for it meanwhile. It sometimes happens that because of the delay in cable reports or interruptions of our lines, that business on 'change will be suspended in all the principal cities until quotations arrive. Now is that a public injury, or a public benefit? The telegraph has reduced the trade and commerce of the world, in respect to buying and selling, down to the simple questions of transportation, commissions, interest, and insurance. The man who buys cotton in New Orleans to-day, may sell it in Liverpool or Havre to-day, and thus do a safe and profitable business if his insurance is all right and the principals with whom he deals are honest and solvent. There was a time when a man by the fleetest horse, or the employment of carrier-pigeons, or by bribing an operator, could get the earliest news of an important change in the foreign

markets and sometimes make a fortune in a day. But remember, gentlemen, he made that fortune by buying the property of his neighbors for less than it was worth or by selling them his own for more than it was worth.

The policy of the Western Union Company is to enable the public to trade upon certainties. But, as we are not a benevolent institution, we don't propose to do the business for nothing. We charge for it as a matter of course. And yet, as I stated before, this department of our business costs us more to transact in proportion to what it yields than almost any other; but we are partially if not fully compensated by the increase of business messages which the frequent report of market changes tends to promote.

I am a little surprised that Mr. Hubbard has seen fit to resurrect the oft-buried slander about the Davis case. Davis was engaged, as many others were, in selling market-reports to subscribers in different cities. His business was injured, of course, when the Western Union came into the field as a competitor with all the facilities of the Associated Press added to its own, and he subsequently gave it up. He sued us in an Ohio court; and what is true in nine out of every ten trials before western juries when our company is defendant, was true in this. He recovered judgment. The amount was \$3,000. We were about to take an appeal when he offered to accept \$1,000. Our attorneys, thinking it was cheaper to pay it than to litigate further and be ultimately successful, agreed to a settlement. When the case was brought to me, I expressed the opinion that it was a mistake to settle it, but felt bound to confirm the stipulation of our attorneys.

The persistency with which this case has been used as a "horrid example" of the evils of the private control of the telegraph, proves that it was a mistake to settle it. That case, unjust as was the result to the Western Union Company, establishes this fact: it is possible to punish corporations for injuries to individuals. But suppose the post-office clerk or carrier steals your letter, what redress have you? If you spend time enough and some money, possibly you may secure conviction of the thief; but for the loss of the money, there is no redress. And so would it be if this bill became a law; whatever mistakes might be made in transmitting messages, with whatsoever loss to the senders, the Postal Telegraph Company would not be responsible, because it is "the agent of the United States," and the United States cannot be sued for damages. That company is authorized to make profits, and is to be aided thereto by the Government, but there is no provision for the payment of losses whether by the willful act or by the neglect of its employés.

I think Mr. Hubbard made a point, or sought to make it, out of the fact that several years ago the rate on a message between New York and Boston was 10 cents. Now I presume he is correct.

Mr. FERRY. If you are getting off from the messages and the prices I would like to have you explain in respect to the close corporation character of these two associations; and I merely want to state, in connection with that, that since this matter has been before the committee, a gentleman of my acquaintance, relating to a matter of peculiar interest to me, stated that he had engaged a press; that he could engage that and all other material; but that when it came to press dispatches the price was so great that it broke up his arrangement.

Mr. ORTON. I devoted considerable time to that subject yesterday. What you say is very likely true. There seems to be a prevalent opinion that it is one of the inherent rights of every American citizen to go into the business of publishing newspapers; and that, when any one

decides to do so, it is the duty of everybody else to help him do it, and to stand in such a relation to him as to insure his making a profit out of it. I trust it will not be deemed an impropriety if I say that I do not share in that opinion. I fail to comprehend why a man who invests say \$10,000 in a press, type, and other appointments, and seeks to make a living by publishing a newspaper, has any more claims upon the public than he who invests his capital in any other business. So long as the law of supply and demand continues in force, it will be impossible to make a poor newspaper profitable in competition with a good one. Suppose that Senators Ramsey, Ferry, and myself should decide to go into the sleeping-car business, which is better than the average newspaper business. Mr. Pullman makes, it is said, fifteen to twenty per cent. per annum on the capital invested in his business, and we decide that we want to have a chance in it. In that case, what would be said in reply to our demand that the railroads should give us the same privileges with our cars on their roads that they do with Mr. Pullman's? Or take another department of business. Mr. A. T. Stewart, it is understood, has a practical monopoly of certain branches of trade. In some departments of silk goods he has a practical monopoly. Perhaps also in kid gloves, hosiery, and linen goods of certain grades. If, then, I wanted to start in business in New York in either of these departments, why should it not be Mr. Stewart's duty to give me the same privileges that he enjoys? Mr. Stewart has acquired whatever monopoly he enjoys by taking larger quantities and paying better prices, all the risks of the manufacturer's business being considered, than any other customer, and consequently he is able to compel all other dealers in these specialties to purchase from him. Is there anything dishonorable in that?

Let us now consider further the partnership between the seven papers in New York known as the New York Associated Press. Do they enjoy any special privileges here in Congress? Cannot a new reporter get access to the House gallery, to the Senate gallery, and to the records of proceedings of both Houses? The Western Union Company will send news from here to New York for a new paper at the same rates we will send for Mr. Simonton's principals, precisely. But this fact will remain: The expenses of the reportorial staff of the one paper are to be borne by its proprietor, while the expense of the reportorial staff of the association is divided between seven. So, if we send his messages at the same price, he pays the full price against a division of that price by seven. As the number of members in this partnership is increased—and no law can regulate the admission of new members—so will they lessen to each the cost of whatever the partnership provides. As they increase the quantity of news so will they increase the difficulties in the way of competition by any new paper. Is there anything wrong in that? It seems to me it is the result of the operation of natural laws as simple and inevitable as the law of gravitation.

Mr. FERRY. There is nothing unjust in that except this. Take California, for instance, where two or three papers are in business and they want this news; suppose they combine and apply to you for the same privileges. As I understand the statement here, they are excluded.

Mr. ORTON. They are excluded from the several partnerships that constitute these associations. I went through with the list of associations yesterday in detail. They are nothing more nor less than private partnerships, admission to which can only be secured by the consent of the members, substantially as in other partnerships. Now, instead of there being a combination between the Western Union and the Associ-

ated Press to exclude new members, there is a standing quarrel, if I may use that term in respect to the relations of men who differ in opinion because of their differences in interest. It is the interest of the Western Union Company to have the news delivered to every newspaper in the land. It is the interest of each newspaper in every city that is a member of this partnership to have no new partners admitted and, if new competitors do start, that they shall not enjoy on the first day of their competition, to the full extent, the ripened benefits of years of organized labor and of thousands and tens of thousands of dollars of capital invested by those already in the business.

Mr. MERRIMON. Let me suggest at that point. The press is a public institution recognized by the Constitution itself. The public have an interest in it. They have an interest in increasing and encouraging it. The communication of news is, likewise, a matter in which the public have an interest, except private news. Public news is a matter in which the public have an interest the same as they have in the press. Does not on these two considerations now rest the policy of the law, of the Constitution, of our institutions, that every facility shall be extended to every body that wants to establish a newspaper, to get news to put in that newspaper to inform the popular mind, and that these combinations between newspapers to get news for their peculiar benefit ought to be discouraged?

Mr. ORTON. Suppose I assent to every proposition you have stated, as I do not, still I cannot answer the question as to how any remedy is to be applied. It is true the Constitution refers to the press.

Mr. MERRIMON. Is it not the true policy to make the news just as cheap as possible to every body who wants it for the purposes of a newspaper?

Mr. ORTON. I think, perhaps, there is not a wide difference of opinion between us on the question of policy, but I think there is some difference as to the facts concerning what constitutes a newspaper. It is possible for any number of gentlemen in a town to join in the publication of a bulletin, monthly, weekly, or daily, that shall contain anything they chose to put in it, taking the risk of consequences of any invasion of private rights in what they say.

The Constitution does allude to the press. It alludes, in the same connection, also, to the human voice, and provides that neither shall be stifled by official act, leaving the question of responsibility for what is said by the one or printed by the other to fall upon those who say and print. It alludes also to money. It is not competent to prohibit me from making my promissory note, and making it for as many different sums as I choose. But I must not imitate the authorized currency of the United States. That is not because I have no right to issue my note, but because of the possible mistake of somebody in taking my note instead of the note of the United States, or of some corporation authorized to issue notes to be used as money. If anybody chooses to take my note for five, ten, or fifty dollars in exchange for anything he has to sell, it certainly is not within the power of Congress to prevent me from making it, or the other from accepting it instead of money. I cannot see, after a good deal of consideration, I do not see how Congress is going to regulate by law the conditions under which partnerships shall be formed for conducting any business, or how it can require me, in the telegraph business, to send messages from Washington to New York, for a newspaper, so that the cost of it will be no greater than to each of seven other papers which receives their news in combination. How is it possible? And if it were possible, why would it

not extend right up here into the Senate? It would then be somebody's duty to see that the cost for reporting for that single paper was no more than the reporting of each of the other seven. It might come to this, that Congress should provide all the reports. It could also provide a general newspaper, but it could not compel anybody to take it. In short, it seems to me to be one of those questions that must, of necessity, be left to regulate itself. I do not know of any section of the country that is suffering for lack of newspapers. It seems to me I have seen some indications, some indications from the floor of Congress, that there was rather a surfeit of news and newspapers now a days; that the thing was becoming an evil, or at least that it was not a blessing that the Government was particularly called upon to extend.

Mr. SAULSBURY. I understand your relation with the newspapers to be this: You do send the Associated Press telegrams as they want them sent, upon the payment of certain fees which you require. I also understand, if I engage in the newspaper business, and have my agents to gather the information, and pay you the same prices, you will send it for me?

Mr. ORTON. Certainly; freely, and all over the country.

I was about to allude to some remarks made by Mr. Hubbard on the question of rates; not to re-open that question. It is true there was at one time a ten cent rate between Boston and New York. That does not, however, prove anything as to the policy of the company then or now. I can imagine a man, for instance, falling into deep water; unable to swim, and paying one hundred dollars for a single plank. But that fact would hardly be accepted as indicating the value of lumber in that locality.

I ought to notice, perhaps, because of the large space it will occupy in the record of these proceedings, an article read by Mr. Hubbard to the committee, cut from a newspaper, purporting to be a memorial from certain stockholders of the Western Union Telegraph Company addressed to the members of its executive committee, asking for some specific action on their part—the purchase of stock and distribution of bonds. I suggest whether the committee should not direct that to be struck from the record of its proceedings, as being entirely foreign to the subject we are considering. No such memorial has ever reached the executive committee, and whether or not it will ever reach them I am unable to say. Suppose it should; is Congress going to consider this question of the basis of capitalization and the character and amount of dividends made by private corporations? What control is there in this bill over the capitalization of the company which it proposes to create? I assume that it will not live a year, if created, unless it can get control of the existing telegraph companies, and I assume that it can only be done by an exchange of the postal-telegraph stock for the stock of the existing corporations by negotiation. Now, there is no limit to the price, except the judgment of the Postmaster-General, who is certainly not an expert in this business. The same expansion, so far as the question of real value is concerned, may take place under this bill, as Mr. Hubbard seems to think is threatened in the case of the Western Union. I allude to the matter simply because it is on the record; I fail, however, to discover any possible relation, even if it were true, to the question of the justice or expediency of passing this bill.

I desire, now, to make a brief statement concerning the operations of the government telegraph in Great Britain, to which frequent allusion has been made by Mr. Hubbard, who claimed that the conditions under which the telegraph business was carried on in that country so closely

resembled those in the United States as to justify a comparison between them.

The population of Great Britain is about twenty-five per cent. less than that of the United States, concentrated within an area but little larger than New England, while the population of the United States are scattered over an area nearly equal to the continent of Europe. When he speaks of sending a message six hundred miles for a shilling, he omits to state that the price for half a mile is also a shilling, and that there are very few messages passing between those extremes, the average distance over which messages are sent in that country being about equal to the distance between Boston and New York, where the charge is thirty cents; and certainly not greater than between Washington and New York, where the charge is forty cents. About ten miles of line must be constructed and maintained in the United States to reach the same number of people that in England may be reached by one mile. The cost of material and labor are so much less in England, that a shilling in coin has nearly the same purchasing power there as fifty cents in paper has here. There the government has a monopoly and is able also to utilize the vast facilities of its admirably organized and largely profitable postal system. Here competition increases the expenses, and, so far from contributing aid or facilities, our Government compels much of its own telegraphic service to be performed at unremunerative rates. Yet, in spite of these disadvantages, the business of the principal company in the United States yields fair profits, while in England it has barely paid working expenses. The facts are as follows:

When the purchase and State control of the telegraph was first brought before Parliament, the estimate of cost, founded on the judgment of experts, was twenty years' purchase of the net profits of the several British companies for the years 1867-'8, and was predicated in the aggregate at £2,200,000 or \$11,000,000. But when the contract was made, it was found that the Government had, in reality, obligated itself to an expenditure of a much larger amount. In general terms this total expenditure was represented to be somewhat in excess of £7,500,000 or \$37,500,000.

But how little the British government or the British people actually knew about this business is shown by the facts—

First. That in 1871 the committee on public accounts of the House of Commons reported that, at that date, no complete separation had been or could be made of capital and current expenditures, but that such a statement would be made to the parliamentary session of 1872.

Second. In 1872, the same committee reported "that the statement was still incomplete, but that Mr. Scudamore hoped to show to Parliament in 1873 all that had been done down to February, 1873, and possibly close the capital account up to March 31, 1873, the end of the fiscal year, with the exception of certain payments to railway companies."

In March, 1873, the same committee report "that with regard to working expenses of the year, it has been impossible to examine and report on them in a proper manner, inasmuch as the scale of salaries and allowances, when approved by the treasury, was not furnished to the audit office in time to enable the payments charged in the present account to be compared with the sum voted by Parliament."

In respect to this unauthorized expenditure, the committee reported as follows:

"Your committee do not hesitate to express their opinion that this wholesale expenditure out of balances in anticipation of the vote (appropriation) is in the highest degree irregular and objectionable, and

appears to be in conflict with the provisions of the telegraph and savings-bank acts; nor can they admit the plea of urgency."

The committee further reported "that in 1871, an additional million of capital, other than what had been previously given for telegraphic purposes, was voted by Parliament on account of capital expenditure. That the whole of this sum having been spent, the department, instead of applying to Parliament for a further grant, has continued its payments for extensions, defraying the cost out of the balances in the hands of the Postmaster-General; that £650,000 (\$3,250,000) had been thus spent up to the end of November, 1872, and that a sum not far short of £800,000 (\$4,000,000) will have been so expended before the end of the current fiscal year, (March 31, 1873,) and that a large proportion of this has been derived from savings-bank deposits; that four years have now elapsed since the telegraph service was taken over by the government."

This report resulted in resolutions of censure passed by the House of Commons, and the subsequent resignation of the Postmaster-General, Mr. Monsell.

On the 8th of August, 1872, the following exhibit of capital, receipts and expenditures of the British telegraph system was reported to Parliament:

Gross receipts, less amount paid to submarine telegraph companies.....	£732,365	\$3,661,825
Expenditures in respect to salaries, rents, and maintenance.....	487,544	2,437,720
Balance applicable to interest and sinking-fund.	244,821	1,224,105
Interest 3 per cent. on £7,300,000 for year to Jan. 5, 1872.		
Interest 3 per cent. on £288,757 for half year to Jan. 5, 1872.		
Interest 3 per cent. on £650,000 for half year to Jan. 5, 1872.		
Total capital £8,238,757, (\$41,193,785.) Total interest.....	£233,081	1,165,405
Balance of surplus applicable to sinking-fund..	£11,740	\$58,700

In other words, the financial result of the British telegraph under state management, not taking the fact into account that a very considerable sum representing items of current expenses had been charged to capital account, up to the commencement of 1872, showed earnings only sufficient to defray working expenses and maintenance, three per cent. on \$41,193,785 and \$58,700 surplus. But three per cent. interest was only paid, because capital was represented by British consols, and on these the rate of interest is less than on any other known government stock or funded debt. Had five per cent. been paid, the lowest rate at which the United States has been able to borrow, and a lower rate than France, or the best railroad corporation in the United States, can borrow at, the financial exhibit of the British telegraph for the year 1871 would have shown an interest account on capital of \$2,059,689 and a deficit of \$894,284. It will be also observed, that of the capital account of \$41,193,785 on the 31st of December, 1871, the sum of \$4,692,285 was included in the capital account for a period of six months only. Had interest at even three per cent. been calculated on this for

the entire year, the annual receipts would not, for that year, have proved sufficient to cover interest and expenses.

But the whole financial history of this enterprise which has been characterized as a financial success, has not been told. The curtain has, however, been sufficiently raised to afford a pretty clear idea of what there is behind it. Thus, on the 3d of March, 1873, Mr. Scudamore testified before the House of Commons committee on accounts, that he had spent on capital account up to the 30th of November, 1872, £8,656,000 or \$43,280,000.

On the 15th of July, 1873, Mr. Scudamore further reported to the House of Commons that the amount of outstanding claims of railway companies in the United Kingdom against the Post-Office in respect to telegraph rights, or property taken from them by the government, was £2,068,804, with interest. Also, £20,406 of claims adjusted but unpaid, making a total of £2,089,210 or \$10,446,050. The sum of £26,500 was also reported as claimed by the way of annual rent by various railway, canal, iron, and coal companies, for the right of telegraphing over their systems or property. The amount of outstanding claims thus reported was acknowledged to be incomplete; but no information respecting liabilities yet to be settled on account of the original purchase was given except a brief intimation that it was very considerable.

The data in possession of the House of Commons on the 15th of July, 1873, indicated, therefore, the approximative cost of the absorption of the British telegraph by the British government at \$52,726,000 with outstanding liabilities for annual rents and unsettled claims for original purchase, sufficient, if capitalized, to augment this sum, at the very lowest calculation, to \$55,000,000.

Private information, obtained from officials of the British Treasury, as might be expected, is to the effect that even with the capital borrowed at three per cent., the receipts of the British telegraph system are inadequate to meet its interest and expenditures; and that the capital account is, furthermore, very much larger than is indicated by any official and acknowledged imperfect figures that have been given to the public.

That, Mr. Chairman, is a concise and accurate history, collated from official sources, of the present condition of the British telegraphs.

Mr. RAMSEY. What are the gross receipts?

Mr. ORTON. The gross receipts are about \$4,500,000 per annum, or half those of the Western Union Company.

Let me say further that this is for a system but about two-thirds the extent of that of the Western Union Company. Yet it is in the face of facts like these that a postmaster-general has on two occasions, in an official report, expressed his opinion that all the telegraph property in the United States could be reproduced for less than twelve millions of dollars.

In this connection I also desire to present a brief exhibit of the telegraphs in France, where the parallel with the United States is very much closer than in Great Britain, that is, as to population. I believe as to area, France is about the equal of Texas.

The French telegraph comprises a system of 27,941 miles of line, 78,557 miles of wire, 4,147 sets of apparatus, and 2,206 offices.

The number of messages transmitted during the year ending December 31, 1872, were as follows:

Interior	5, 395, 762
International sent and received	827, 581
Total ..	6, 223, 343

The receipts for 1872 were as follows :

	Francs.
For interior messages	6, 796, 488. 45
For international.....	5, 385, 910. 18
Total.....	12, 182, 398. 63

Average rate of tolls for inland messages, 1 franc 25 centimes; for international 6 francs 50 centimes.

I desire to remind the committee that the statement has been made here that you can send a message anywhere in France for a franc, and anywhere in Switzerland for half a franc. Mr. Harrington stated that while you could send a message in Switzerland for half a franc, that the tariff on a message passing through Switzerland was twenty-four cents. We can have no duplicate or triplicate system here, but are obliged to work upon a uniform rate, and I repeat that the average rate in the United States, notwithstanding the differences as regards population and area, are as low as the average in Europe.

Mr. HAMLIN. Can you state from that paper, or from your own knowledge, the different rates in France, interior and exterior?

Mr. ORTON. The charge varies in France on exterior business as between transit and international. The transit business of France would be only that which passes from Spain and Portugal into Europe. The minimum rate in France for a message sent to an office in the same department is 60 centimes; to an office in another department, 1 franc 40 centimes. The rate from France to Germany is 4 francs; to Austria and Hungary 6; to Baden, Bavaria, Belgium, Switzerland, and Würtemberg, 3 francs; to Spain, England, Italy, and Holland, 4 francs; to Portugal, 5; to Roumania and Servia, 7; to Sweden, 8; to Norway, 8 francs 50 centimes; to Turkey and Greece, 10; and to Russia, 10 francs 50 centimes.

Mr. RAMSEY. Your statement represents the gross receipts of the telegraph in France as about two million dollars. Is that all?

Mr. ORTON. It is over twelve million francs. About two and a half million dollars.

Mr. HARRINGTON. Perhaps it would be well if I should remark that the rates on these international and transit messages in Europe are not governed by the countries through which the messages pass. Switzerland cannot lower the price without the concurrence of the representatives at their annual conference at Vienna. They fix the rates that can be charged by each country, and no one country can change those rates. They have a confederation of the telegraphs.

Mr. ORTON. I see, by referring to the official report, that the average tolls in France upon international messages is 6½ francs, or about \$1.30 gold.

	Francs.
The French ordinary working expenses for 1872 were....	12, 695, 000
Extraordinary expenses for 1872 were	1, 119, 000
Total, francs.....	13, 814, 000

From 1850 to 1872, inclusive, there were only four years when the receipts for the transmission of messages were in excess of the working expenses, viz, 1856, 1859, 1868, and 1869. The excess in these four years amounted to 1,383,737 francs. During the other nineteen years the working expenses exceeded the receipts 17,093,018 francs while the

extraordinary expenses for the same time amounted to 36,368,961 francs.

Until 1858 no distinction was made between interior and international messages. The average rate of tolls upon each class since that date was as follows :

		Average tolls on interior messages.	Average tolls on inter- national messages.
1858.....	Francs..	5. 12	15. 09
1859.....	do.....	4. 56	13. 47
1860.....	do.....	4. 05	12. 10
1861.....	do.....	3. 87	11. 15
1862.....	do.....	2. 30	10. 24
1863.....	do.....	2. 22	9. 94
1864.....	do.....	2. 15	8. 16
1865.....	do.....	1. 98	7. 71
1866.....	do.....	1. 89	6. 90
1867.....	do.....	1. 85	6. 94
1868.....	do.....	1. 79	5. 16
1869.....	do.....	1. 41	6. 84
1870.....	do.....	1. 03	7. 14
1871.....	do.....	1. 02	6. 66
1872.....	do.....	1. 25	6. 50

On the first of January, 1862, a uniform rate of two francs as the minimum tariff upon interior messages was substituted for the tariff previously existing, which was proportional to distance. This charge reduced the average rate upon this class of messages from 3 francs 87 centimes in 1861, to 2 francs 30 centimes in 1862, and was followed by an increase of 597,687 messages, or 64.94 per cent.; 359,605 francs 91 centimes in receipts, or 7.37 per cent. and of 706,639 francs 68 centimes in working expenses, or 10 per cent.. In 1861 the working expenses exceeded the receipts 962,576.90 francs; and in 1862, 1,094,874.65 francs, being an increase in the annual deficit of 132,297 francs 75 centimes, or 13.7 per cent. To provide facilities for the increase in the tariff anticipated by the reduction in the rates, there had been expended in construction during the preceding four years 9,892,266 francs. It took seven years after this reduction, and the expenditure of 11,946,603.66 francs, in additional construction, before the receipts again equaled the working expenses. In 1868 the receipts exceeded the working expenses 243,102.11 francs; and in 1869, 339,681.74 francs. On the 9th July, 1868, the tariff on messages sent to stations on the same department was reduced to half a franc, which reduced the average rate for interior messages during the year six centimes, or 3.2 per cent. On the 1st of November, 1869, the tariff on all other interior messages was reduced to one franc. This reduced the average rate for 1869 to 1 franc 41 centimes; for 1870, to 1 franc .03, and for 1871, to 1 franc .02 centimes. The result of this reduction in the rates was a decrease in the receipts for 1870 over the preceding year of 730,464.72 francs and an increase in the working expenses of 1,748,887 francs 84 centimes, making a difference of 2,479,352.56 francs.

The increase in the number of messages sent in 1870 over 1869 was 909,209, or 19.12 per cent.; the decrease in receipts, 730,464.72 francs or 7.14 per cent., and the increase in the working expenses 1,748,887.84 or 17 per cent.

In 1871 there was an increase in the number of messages over 1869 of 208,083, or 4 per cent.; a decrease in the receipts of 1,862,112.60 francs or 18.2 per cent.; and an increase in the working expenses of 2,373,887.84 francs or 23 per cent.

During the year ending December 31, 1871, the working expenses exceeded the receipts 4,047,243.14 francs.

On the 6th of April, 1872, the tariff on messages between offices in the same department was increased from 50 to 60 centimes, or 20 per cent.; and on messages between all other stations in France from one franc to 1 franc 40 centimes, or 40 per cent. The statistics for 1872 show that the proportion of messages sent to stations in the same department is to those sent to other departments as one to three; so that the increase of 40 per cent. took effect on 66 per cent. of the interior business. The number of interior messages sent in 1871 was 4,371,932, and the receipts therefor were 4,494,823.55 francs. The number sent in 1872 was 5,395,762, and the receipts therefor 6,796,488.45 francs. The increase in the number of interior messages for 1872 over 1871 was 1,023,830, or 23.41 per cent., and on the receipts for this class of messages 2,301,664 francs 90 centimes, or 51 per cent. The result of increasing the tolls upon interior messages was to reduce the loss in working the system from 4,047,243.14 francs in 1871, to 700,945.55 francs in 1872.

Although the French government, while inaugurating a low rate of tolls for interior messages, followed the usual continental practice of charging a higher rate on international messages, the number of the latter was not sufficient to materially assist in making up the loss on the former, and hence the necessity for increasing the rates on interior correspondence in order to prevent the deficit from continuing. As the increase of the rates did not go into operation until the 6th of April, 1872, the average tolls for the year was reduced by the rates of the first three months. The average charge for the latter months of the year was 2 francs 7 centimes per message.

Now I have taken these two countries, the two leading countries of Europe, Great Britain and France, and have collated these statistics and this information from official sources. We have here the parliamentary documents from which they were collated as to Great Britain, and the reports of the French telegraph administration.

France having begun an increase of rates, and it being within my knowledge that the clamor for increased compensation on the part of the operators in Europe is increasing, I predict that the example of France, in this increase of 40 per cent. in its interior rates, is destined to be followed by Belgium, Switzerland, and probably other European countries.

Meeting Mr. Simonton, the agent of the New York Associated Press, at the hotel this morning, I mentioned to him as an item of news of the day that yesterday I had been explaining the relations between the associated press and the telegraph, and invited him, if he were at the Capitol during the morning, to come in, in order that the committee might put to him any question concerning the statements I have made, or upon any points that have not been touched, that bear upon this subject.

Mr. RAMSEY. You stated the other day, I think, that the number of telegrams sent by your company was twenty millions?

Mr. ORTON. I understood your question to be, at least this is my recollection, as to the number of messages now being sent in the United States. I gave the number at about twenty millions. Our company is sending at the rate of about sixteen millions a year. Other companies probably send enough to make up the number stated.

Mr. RAMSEY. What is the number sent in France and England?

Mr. ORTON. About six millions in France and about fifteen and a half millions in Great Britain.

Mr. HAMLIN. I want to state to you, Mr. Orton, my understanding of this matter of the associated press, and I want you to tell me if I am right. I understand you to say that you have seven papers in New York who form an association, and you furnish them with the dispatches and they pay you so much?

Mr. ORTON. No, sir. The association at New York is in the business of collecting the news all over the world, which it transmits, so far as the United States is concerned, by our lines. It has its agencies here and in all the principal cities. I thought your question implied that we had something to do with gathering the news.

Mr. HAMLIN. No, no. This association gathers the news and pays you so much for the service you perform for them?

Mr. ORTON. Yes, sir.

Mr. HAMLIN. Then in return they have a right to and do sell the news to other papers in New York?

Mr. ORTON. Yes, sir.

Mr. HAMLIN. Now suppose I am connected with a paper there other than these, is there, in your agreement with the associated press, any power that can be exercised on your part that will enable me, if I choose, to get in and be one of the association?

Mr. ORTON. None whatever. There is not between the Western Union Company and the New York Associated Press any written contract except memoranda of the amount of news being transmitted on specific routes and the rates therefor, both liable to be modified by either party on any day of the year.

Mr. HAMLIN. Is there any obligation on the part of that association by which they can be compelled to furnish me, the outside paper, with that news?

Mr. ORTON. Not by virtue of any understanding with us. I do not know the conditions on which they admit a new member. I think, however, it requires the unanimous consent of the present members.

Mr. HAMLIN. Then you will furnish me, any time, at the same rates?

Mr. ORTON. Yes, sir. We will send the same quantity of news between the same points at the same rates; but you must provide the news.

Mr. MERRIMON. Why do seven newspapers have it? Why not have an association of business men?

Mr. ORTON. I have never turned my attention to the consideration of that subject. A very essential item of conducting newspapers in our large cities is the news, and all the news that is required in Chicago this morning is just as valuable in Saint Louis, although Chicago uses it at the same time, as if Chicago had a monopoly of it. It is also just as valuable at San Francisco, Cincinnati, and New Orleans. We can make arrangements for the transmission and delivery of this news to a large number of papers in different places at the same time, so that the

cost to a single paper, in many cases, is less than a tenth of a cent a word.

Mr. MERRIMON. Why would not seven gentlemen without newspapers do just as well as seven gentlemen who do own newspapers?

Mr. ORTON. They would, if they could find customers for the news. The cotton and produce exchanges collect news for the use of their members through their own agencies.

Mr. MERRIMON. Does not this press association, owned by certain newspapers, act as a monopoly of the news? Do they not direct it to whom they please, where they please, and at what price they please?

Mr. ORTON. They collect news in the first instance for publication in their own papers. They also offer it for sale to other papers in other cities where it appears simultaneously. The papers in those cities long ago combined and agreed with the New York association upon the terms of purchase. The latter could not sell to a new paper in Chicago, Saint Louis, or Cincinnati, without the consent of the papers in those cities who are the present purchasers.

Mr. MERRIMON. Is that legitimate in trade? Forestalling is indictable.

Mr. ORTON. Seven other men can join and do the same thing right over again. The facts which make up the news reports are accessible to whoever will be at the expense of collecting them. The combination is not for controlling the facts, but for lessening the cost of obtaining and transmitting them.

Mr. HAMLIN. You send the news of the associated press and they pay you a stipulated sum. They have a right to and do furnish it to other papers. Suppose they furnish it to twenty other papers, are you benefited in that event?

Mr. ORTON. Not if the additional papers are at the places where we already deliver reports. We receive no more for delivering three or four copies at the same time than for one or two. They are written on manifold paper, and are all taken at the same time.

Mr. HAMLIN. So, if they can sell their news for all they pay you, they get it for themselves for nothing?

Mr. ORTON. Yes, sir; *if* they can. The same associations in the several sections of the country that are the purchasers of the news gathered at New York are the sellers to New York of all the news gathered in their own territory. We are bringing news to New York papers from all parts of the world, and from New York we distribute it throughout the country.

Mr. FERRY. (To Mr. Simonton.) What are the conditions of your association in regard to that news? That is, do you fix it upon a basis of which all can avail themselves?

Mr. SIMONTON. No, sir. The question of availability would require a longer time to discuss than we probably have this morning. I can only say that the New York Associated Press governs that matter for itself, and by its own vote. The adverse vote of a single member will prevent the sharing of its facilities within the city of New York with any other newspaper in the city. In regard to the newspapers outside of the city, as a general rule, the local press have control of that matter by the arrangement they make with us. The fact is, the associated press is not a money-making association. In the matter of news it is rather a mutual-benefit association, by which they mutually assist each other in collecting the news and distributing it to one another, receiving part compensation in money and part in services, and then dividing the general expenses of the whole between the papers of the

different sections, towns, and villages, not in proportion to the quantity they receive, but in proportion to their ability to pay. The New York City press, which has all the responsibility, financially, almost all the risk, really pays larger bills, much larger, after crediting to account everything they receive, than the press anywhere else in the United States. I would like to say that there is nothing at all in our relations with the Western Union Telegraph Company that we desire to conceal, and if there is any question, now or at any time, you would like to ask, I shall have no hesitation in answering it.

Mr. FERRY. Is there anything in the relations between you and the Western Union Company that prevents them making equally advantageous terms with others?

Mr. SIMONTON. Of course, we can divide the cost of a large system between one, two, three, or five hundred papers, where it would be difficult to find one or two hundred outside to unite. We have that advantage.

Mr. FERRY. The same rates can be enjoyed by other parties?

Mr. SIMONTON. Yes, sir; we have no exclusive rates whatever.

Mr. ORTON. (To Mr. Simonton.) Is it not true that, because of the pecuniary ability of the association known as the New York Associated Press that we have declined, in a few instances, to give that association as favorable terms as we have given to single papers?

Mr. SIMONTON. It has been so, and we have considered it very unjust.

Mr. SAULSBURY. Is there any arrangement giving the associated press any agreement by which the Government of the United States would be prejudiced in the transmission of news to it in matters affecting the interests of the Government. In other words, if the news were received by the associated press in reference to the value of the bonds of the United States in the foreign markets, would they have the exclusive right to use your lines for the purpose of disseminating that news to the exclusion of the Government, if the agent of the Government wished to send the same news?

Mr. ORTON. No, sir. We are bound by the terms of the contract with the Government under the laws of 1866, to which I referred in my opening remarks, to give Government messages "priority over all other business." This we do every day. Any item of foreign or domestic news, political or financial that affected the prices of United States bonds or other American securities, would be instantly furnished to the Commercial News Bureau, whose operations I have previously explained, and in a few minutes the facts would be known in every circle of business men within reach of the telegraph on this continent.

I desire to make a further statement in explanation of the relations of the telegraph to the press both in combination and separately. It is the business of the New York Associated Press to report facts. The Tribune, Herald, Times, World, Express, Sun, nor any two of them are in accord concerning any public man nor concerning any public question. You see how delicate is the duty of the agent who controls the selection of the news for such diverse tastes. It must be simple facts, no adjectives, no coloring, but strictly impartial. But alongside of the staff of the associated press at Washington sits a special staff, provided by each of these papers, who take up particular topics, discuss, elaborate, criticise, and individualize, naming this Senator and that Representative in terms of praise or censure. The special dispatch going, say to the Times, applies one class of adjectives to Senator Saulsbury and his political friends, and the opposite to Senators Ramsey and Hamlin. The reporters of the other papers will bestow compliments or criticisms

according to the known personal or political bias of their editors. With these reports called "specials," the associated press has nothing whatever to do. By the rules of the New York Associated Press each member has the right to receive exclusive "specials" from the national and State capitols—Washington and Albany. In respect to all other "special" dispatches to the Herald, Tribune, Times, World, and the rest, it is the duty of each paper immediately on receiving any item of news, to offer it to all its associates. It is then optional with each associate to take the news or not. If they decide to take it, as many as do, pro-rate the telegraph tolls, with an addition of 20 per cent., I think, towards defraying the expense of the reporters.

Mr. HAMLIN. If but one paper took it, it would have to pay for the dispatch?

Mr. ORTON. Yes, sir.

Mr. RAMSAY. Are you through with your statement, Mr. Orton?

Mr. ORTON. The only further remark I now have to make, Mr. Chairman, is one that is due to the committee, and that is, to express my earnest thanks for the courtesy they have shown me, and the patience with which they have listened to my statements.

SEVENTH DAY.

JANUARY 26, 1874.

Mr. HUBBARD. In my opening of this case, gentlemen, I had the honor to submit that, by the Constitution, the business of transmitting intelligence from one person to another at a distance was intrusted to Congress without reference to the method by which the end was to be accomplished; that the Constitution was one of enumeration, not definition, and that it was the duty of Congress to decide upon the means of executing the granted powers; that all the powers given by the eighth section of the first article were undoubtedly intended to be vested exclusively in Congress, as the power of coining money, making war, and maintaining a navy, that these powers could not be delegated to any third party; that the Supreme Court had decided that certain regulations of commerce, relating purely to State police regulations, might be made by a State until legislated upon by Congress, yet in all national and inter-State transactions, jurisdiction was vested exclusively in Congress, and that as all State legislation was of no force outside its own territory, it was impossible for any State to regulate by law inter-State communication, therefore the telegraph system between the different States was unregulated by law, and subject only to the will of the Western Union Company; that the power it possessed was too great to be safely trusted to any corporation; that the necessity of maintaining post and telegraph offices, throughout the country, for the conduct of one kind of business, made it more expensive than if the whole service was performed by a single administration, and that the rates were high. The bill proposes to unite the management, increase the facilities, restrain this arbitrary power, and reduce the rates at least one-third, without cost to the Government.

In reply, Mr. Orton contends, in the first place, that Congress has no right to pass the bill, because it would, indirectly, take private property without compensation; or if this measure should pass, it would annihilate the property of the Western Union Telegraph Company, which would be a violation of the Constitution; and referred to the

minority decision in the celebrated case of the Charles River Bridge *vs.* The Warren Bridge.

The Charles River Bridge corporation was incorporated to construct a bridge from Boston to Charlestown, levying a toll upon the passengers. After it had been in operation some years the Warren Bridge was chartered for the purpose of constructing a free bridge between the same places. The Charles River Bridge took the ground Mr. Orton now holds, that the construction of the second bridge would result in the annihilation of the value of their property, which would be the breach of contract between the State and the corporation. The court in their decision say :

The object and nature of all government is to promote the happiness and prosperity of the community by which it is established ; and it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created ; and in a country like ours, free, active, and enterprising, continually advancing in numbers and wealth, new channels of communication are daily found necessary both for travel and trade, and are essential to the comfort, convenience, and prosperity of the people.

Mr. HAMLIN. Who was that opinion delivered by ?

Mr. HUBBARD. By Chief Justice Taney.

There is no exclusive privilege given to them over the waters of the Charles River, above or below their bridge ; no right to erect another bridge themselves, nor to prevent other persons from erecting one ; no engagement from the State that another shall not be erected, and no undertaking not to sanction competition, nor to make improvements that may diminish the amount of its income. Upon all these subjects the charter is silent, and nothing is said in it about a line of travel so much insisted on in the argument, in which they are to have exclusive privileges. No words are used from which the intention to grant any of these rights can be inferred. If the plaintiffs are entitled to them, it must be implied simply from the nature of the grant, and cannot be inferred from the words by which the grant is made.

This decision has been affirmed from that time down to the present ; and the opinions of all the courts sustain the rights of the people as against the rights of any monopoly.

Mr. Orton says, that even if there is no legal contract, yet the passage of the bill will be the violation of an implied contract made between the Government and the telegraph companies by the law of 1866.

The first section of that act gives to telegraph companies "the right to construct, maintain, and operate lines of telegraph" "over any post-roads of the United States." The second section gives to the Government the right of priority of communication at rates to be annually fixed by the Postmaster-General. The third section provides "that the United States may at any time, after the expiration of five years from the date of the passage of this act, for postal, military, or other purposes, purchase all the telegraph-lines, property, and effects of any or all of said companies at an appraised value, to be ascertained by five competent, disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the company interested, and one by the four so previously selected."

Section four provides, "that before any telegraph company shall exercise any powers or privileges conferred by this act, such company shall file their written acceptance with the Postmaster-General of the restrictions and obligations required by this act."

All the principal telegraph companies of the United States have accepted the provisions of this act. Mr. Orton says that when the Western Union assented to these provisions, a contract, expressed or implied, was thereby made between the Government and that company.

If there is a contract it requires that when the United States elect to purchase the lines the companies will sell them at an appraised value. The consideration received by the companies was the right to construct their lines on all post-roads.

Mr. MERRIMON. When did the Western Union accept the provisions of the act?

Mr. HUBBARD. Very shortly after its passage. Admitting there is a contract—that if the United States engage in telegraphing they must take these lines at an appraised value—we assert that the bill provides for its performance in the eighth section. The company which is thereby incorporated is required to take the lines of any company that may signify its desire to sell its lines on terms fixed by appraisers, following the exact language of the act of 1866.

We contend, therefore, in the first place, that there is no contract, express or implied; and, if there is, that it will be performed according to the letter of the law if this act shall be passed.

Mr. Orton contends that, if there were no other objections, it would be impolitic to adopt this system, because it constitutes a partnership between the Government and a private corporation, to be conducted by both official and private agencies, under which there will be a division of the expense between the Government and the company, while all the profits are to accrue exclusively to the latter.

What is a partnership? It is when two parties are interested in the profit or loss of an enterprise. What are the provisions of this bill? They are, simply, that the Post-Office Department shall receive five cents on each telegram for the services performed by it, and that the balance shall belong to the company. There are not the slightest *indicia* of partnership in this transaction. The profit or loss will be borne by the company, while the compensation of the Post-Office Department is fixed and ample for the services performed by it. Mr. Orton says continual conflicts must necessarily arise between the officers of the company and of the Government. The duties of the two are distinct, clearly marked, and sharply defined; where the one ends there the other begins, and there is no overlapping of the duties of the one upon the other.

The telegram will be received by the post-office official, delivered to the operator, when the duty of the post-office is completed, so far as that transaction is concerned. The telegram is transmitted to the operator at its destination, received, written out by him, and is then handed to the clerk of the post-office to be enveloped and delivered.

There can be no possible confusion of duties. The same double-headed system, as Mr. Orton calls it, exists at the present time under the English postal-telegraph system, which is divided into two departments, the one belonging to the electricians and the other to the Post-Office Department, each having their servants and employés.

Mr. Orton says there are no idle men in his service, and that, as a tax-payer, if there are any in the Post-Office Department, he protests against it; and, if there are none in either, there could be no saving of expense by transferring the telegraph to the postal service.

There is now building in New York a post-office on one side of Broadway and a telegraph-office on the other. They require clerks in the one to sell stamps and in the other to receive payment for telegrams. In both there must be clerks to receive the letters and telegrams. The proportion of telegrams to letters is as two to eighty. The same post-office clerk, in addition to his present duties, can sell all the stamps, receive all the telegrams and letters, instead of requiring two different agencies

for this purpose. So at the office of destination, the post-office clerks can easily receive and distribute both telegrams and letters; the carriers of the post-office are in many places nearly sufficient to give as good delivery of telegrams as is now given. Ask the postmasters in any of our principal cities, who have been long in office—the postmasters of Washington or Boston, for instance—whether they cannot, with a very little increase of their force, establish a better delivery system of telegrams and letters than is now possible. Mr. Orton believes that their plan of sending messenger-boy after messenger-boy, with three or four telegrams in their pockets to loaf and loiter along the way, is more certain than a half-hourly delivery by carriers, each going his own round, knowing where every one lives and the proper person with whom to leave letters and telegrams. Mr. Orton says there are four hundred letter-carriers and five hundred messenger-boys in New York. Who can doubt that, if there were one or two hundred more letter-carriers, a half-hourly delivery within a short distance of the post-office, and hourly at distances beyond, there would be a much better delivery system than is now possible.

The use of stamps will make a great saving in the method of keeping accounts. The telegraph company keep several sets of accounts with its various offices, to be frequently balanced, each office giving statements of telegrams sent and received, amounts paid or to be collected. This will be greatly simplified by having everything prepaid by stamps. The saving by the union of the two services is estimated at from 15 to 20 per cent. It appears from Mr. Orton's statement in regard to the Pacific and Atlantic Telegraph Company, that its lines have recently been amalgamated with those of the Western Union. This was followed by giving up of the offices of one company, its entire expenses in most places were saved, and a portion of those of the Western Union let. So it will be when this system is adopted; the offices of the Western Union Telegraph Company which now compete with other telegraph companies, and with the post-office, will be unnecessary, making a saving of expense in this single item of over \$1,000,000 a year, the entire amount expended by the opposition companies, plus several hundred thousand dollars expended by the Western Union Telegraph Company.

Mr. Orton says the business of the telegraph and mail proceeds upon entirely different principles; while the Post-Office Department can send an unlimited number of letters in a mail from here to New York they send but one telegram at a time. This is true; but, on the other hand, there is but one mail a day from here to New York—for no one sends by the morning mail, because letters by it are delivered no sooner than by the evening mail; whereas the telegraph is going day and night.

It is said "that while the expenses of the telegraph increase in a measure corresponding to the growth of the business, the post-office service can indefinitely expand at a moderate increase of expense." What are the facts? In 1868, there were transmitted by the Western Union Company five million messages, at a cost of \$4,000,000. The same year, there were sent four hundred and fifty-six million letters, at a cost of \$22,000,000. In 1873, there were transmitted twelve million commercial telegrams, at a cost of nine and one-third million dollars; and seven hundred and sixty-four million letters, at a cost of \$29,000,000. The telegrams increased 110 per cent., the cost 47 per cent.; while the letters increased 70 per cent. and the cost 28 per cent. Double the number of telegrams would have increased the cost 42 per cent.; while double the number of letters would have increased the cost 40 per cent., showing

that the same principles operate alike in either case. The statistics of Europe are to the same effect, and prove that the expenses of the telegraph increase less than one-half as fast as the business increases; therefore, if by a reduction of the rates one-third, which we propose to do, the business is doubled, the net profits will be as great with the increased business and reduced rates as with a smaller business and higher rates.

Mr. Orton does not directly state that the postage of five cents to be paid the Department is not sufficient to cover its proportion of the expenses; but as this is an important point it is well to understand what the Post-Office Department is required to do, and if five cents is ample compensation. The Post-Office Department, in addition to the work it performs for letters, will provide the stamped paper, furnish and direct the envelopes, and make a special delivery whenever necessary. For this extra work it will receive 4 cents; if $2\frac{1}{4}$ cents is allowed for special delivery, the amount now paid by the Western Union Company, it leaves $1\frac{3}{4}$ cents for the remaining extra work to be performed. The entire cost of each letter and newspaper is 3.8 cents; office business, 1.6 cents; the proper proportion of this sum to be assessed on a letter is 1 cent, on newspapers .6 cent; for transmission, 2.2 cents. The expenses of the Post-Office Department for 1873 were \$29,000,000; for the transmission of the mails, \$16,800,000; all other or office expenses, \$12,250,000.

The committee noticed Mr. Orton's admission that the time will come when the telegraph will be united with the Post-Office Department, but that he does not think at the present time there is any occasion or demand for that transfer. I lately read in a newspaper, "never do that which your enemy wants you to do." Mr. Orton says the Government must at some time buy these lines; but not now. He is the president of the telegraph company and it is his duty to look primarily after its interests. If the time has not yet come when it is for its interest to sell its lines, it follows that it is, probably, the time when the interests of the people require that they should be purchased.

He says in his last report that all the competing companies are losing money; one by one they are passing into the control of the Western Union, and soon will have no substantial competitor.

I read in my opening a memorial from stockholders to the Western Union Telegraph Company, praying for a bond-dividend of 50 per cent. Mr. Orton said it had never been submitted to the trustees, and prayed that it might be stricken out. I have no doubt that he has always opposed such a dividend, and is not responsible for its publication. If the gentlemen will examine the monetary articles in the New York papers they will find that for several days prior to that time not a single day passed without some allusion to this bond-dividend of 50 per cent., while the last report Mr. Orton shows a balance of \$13,000,000 of assets on hand, the net earnings of the company for the last few years. All know what these memorialists state, that it has been the policy of Mr. Vanderbilt to make such dividends; and what he has done in other companies they ask him to do in this. When all rival companies are amalgamated, when they have the power to fix the rate without fear of competition, and when this dividend of 50 per cent. has been made, then will be the time to sell these lines to the Government.

The telegraph, he thinks, requires absolute power to manage it successfully. Is that the kind of rule we desire? Perhaps a manager with uncontrolled power at its head might be more economical; but do the people of this country wish to have the entire telegraphic, or any other interest, in the hands of one man? Or, do they prefer to have it

regulated by law ; this absolute power, exercised neither by the Government nor by the company, as this bill proposes to do ?

Again, Mr. Orton says this scheme must be considered as though the Western Union would not sell its lines to the Postal-Telegraph Company. We have always considered it as though the Postal-Telegraph Company would acquire their lines. We assume that, because we presume men of the intelligence of Mr. Vanderbilt and Mr. Orton will do that which it is for their interest to do.

Mr. Orton says that if this scheme is carried out it will annihilate their property. Will they consent to this when, under the provisions of this bill, they can sell it to the Postal-Telegraph Company ? The gentlemen associated in this enterprise are interested in other telegraph-lines, and have the means of providing whatever money may be required, either for the purchase of the lines of the Western Union, or for the construction of new lines, if they shall not desire to sell.

Senator Merrimon inquires whether, if Congress should establish a postal-telegraph system, it could authorize the Postmaster-General to contract with the Western Union Company, and if they could do the business as cheaply as the proposed company. To which Mr. Orton replied that it could offer better terms and stronger guarantees than any other company.

The bill which was originally submitted to Congress by the promoters of this enterprise contained a provision that the Postmaster-General should be authorized to contract with the lowest bidder. That proposition was opposed by every telegraph company on the ground that, if the Government contracted with any one company, then all the others must necessarily do a competing and losing business and fail. Changes in the bill were therefore made by which low rates were established ; a contract authorized with a company, which was required to purchase existing lines at an appraisal. There was, however, another reason which led to the change. Congress has adopted two methods of payment to contractors for the transmission of the mails. Wherever an equipment pertaining to the realty is required for the work, like railroads and telegraphs, there Congress decides upon the compensation. Where, on the other hand, there is a mere roadway, requiring the purchase of coaches and horses to carry the mails, which can be used for any other purpose and in any other place, Congress has authorized the Postmaster-General to let it to the lowest bidder. It necessarily follows that Congress must establish the rates and compensation to be paid for furnishing and operating the lines of telegraph for the transmission of telegraphic correspondence.

A few years since proposition was made to the Western Union Telegraph Company that they should assume the place of the Postal-Telegraph Company, and perform the service proposed by the bill, which they declined to do. Now, when they see the plan is nearing its consummation, and will be successfully carried out ; when others have borne the heat and burden of the day, they come forward and say they can offer better terms and give stronger guarantees than any other company. But what those better terms or stronger guarantees are we fail to see and they neglect to state.

What would be the result if the telegraph-service was let to the lowest bidder ? There is no one that could compete with the Western Union Telegraph Company. There would be an auction, with but one bidder, and that the Western Union. Instead of obtaining the lowest rates, you would obtain the highest.

It may be proper in this connection to compare briefly the condition

of the telegraph-service when this measure was proposed to Congress with its present position. In 1868 I stated that the average rate of the Western Union Telegraph Company was \$1, and that there were about seven millions of messages annually transmitted. In a pamphlet circulated in Congress in 1869, entitled, "Statement of the Western Union Telegraph Company," it is stated "that the number of messages annually transmitted by the company shows that Mr. Hubbard's estimate gives less than 70 per cent. of the number actually sent over the wires. The average rate per message in the United States is 57 cents." Two years ago the company applied to the Appropriation Committee of the House for an increased compensation for the Signal-Service and stated that the number of messages transmitted in 1868 was about five millions. The rate, instead of being 57 cents as they formerly stated, or \$1 as I stated, was \$1.20; and the number of messages, instead of being underestimated by me 70 per cent., was overestimated nearly 50 per cent. The average rate since this measure was introduced into Congress, has been reduced from \$1.20 to the present average of about 60 cents.

The rates were then arbitrary and irregular; uniform systems were subsequently introduced, with different rates in different sections of the country; higher in the West than at the East; higher at the South than at the West. This was criticised and followed on the 1st day of last July by the substitution of a uniform rate all over the country.

At the same time it was claimed that it was possible that half-rate messages could be sent at night with benefit to the public and company. This same statement, entitles one of its sections "Impossibility of utilizing the telegraph-lines by night as well as by day." These night-messages are now very generally used for long distances.

Reference was made to recent inventions which promised to be of great value in reducing the expenses of telegraphing: the duplex instrument of Mr. Stearns, by which messages could be sent in opposite directions at the same time on a single wire, and the automatic telegraph; and upon these the promoters of this enterprise relied for obtaining cheap telegraphing. That, also, was derided by our opponents, as mere theory, "nothing new in the idea;" and of little or no practical value; yet in the last annual report of Mr. Orton the patent of Mr. Stearns, which that company now own, is described as the "most important and valuable invention since the Morse Telegraph was first established."

You have seen the automatic system; and although I do not coincide with the views of Mr. Harrington, that it can be of great benefit, used alone, yet, allied to the postal system, it must be of very great value, and almost indispensable.

Mr. Orton thinks the telegraph can never rival the mails in number of telegrams transmitted. I beg leave to differ from him in that opinion so far as relates to correspondence between remote places. It is possible to erect lines from New York to Chicago that will transmit as many messages day by day as there are now letters transmitted between those places; and the day will, I have no doubt, come when a large proportion of the correspondence between distant places will be by telegraph, and then, if the telegraph is not assumed by the Post-Office Department, its revenues will run far behindhand, and the deficit be greater than it is now.

These two inventions are among the instrumentalities by which this event is to be hastened on. But the day for new inventions has not passed, and these are not the only improvements that are to be made. In the transmission of a message from here to New York, the current

starts from the instrument at Washington, moves over the wires to New York, where it is received, then passes on through the earth back again to the starting-point; thus the same message may be received at Washington after it has passed through the earth from New York to Washington. The earth is a vast conductor through which these messages pass; not two at a time in opposite directions, but by the hundreds and thousands at the same time in many directions, and yet each message goes on unerringly in its course, neither interfering nor intermingling with any other. And if diverse messages are transmitted through the earth as a conductor there is no physical reason why various messages should not be transmitted at the same time in different directions through a single wire, so that one wire, instead of being used for the transmission of only two messages at once, may be used for four or possibly eight messages at the same time.

Mr. MERRIMON. Will it trouble you to explain how this is done?

Mr. HUBBARD. The first time that I ever appeared in this matter I introduced Mr. Stearns as a witness to explain his invention. Mr. Orton said: "Can you tell us, Mr. Stearns, how that is done?" Stearns stopped, thought a minute and said, "Mr. Orton, can you tell me how you send it one way?" Mr. Orton said, "No." "Well," said he, "when you can tell me how you can send a message one way, I will tell you how it is sent two ways at the same time." It is quite difficult to explain; but in Harpers' Magazine for August, it is explained.

Mr. RAMSEY. Did you mean to say that the current on its return through the earth could be tapped at any point?

Mr. HUBBARD. The current starts from the positive pole of the battery, proceeds through the transmitting instrument at Washington, over the wires, to the receiving instrument at New York, there the wires are connected with the ground, the current follows the wires into the ground at New York, it passes through the earth, comes up on a wire that is buried in the earth at Washington, and enters into the battery at the negative pole. If it is tapped just before it enters the negative pole at Washington, the same message will be received that was sent from the positive pole after it has completed the entire circuit.

Mr. MERRIMON. Why does it come back on a straight line to Washington?

Mr. HUBBARD. It comes back; why it comes back—why it goes—no one knows.

Mr. FERRY. Could you tap the earth anywhere and take the same message if the earth was a conductor like the air?

Mr. HUBBARD. Yes; if you had suitable mechanism. In order to complete the circuit, the current must run from the positive pole to the negative, no matter how long the circuit is; and there cannot be a complete circuit unless the positive and negative poles are in contact.

As I have stated, the potentialities of the telegraph are boundless; no man dare say what the future will bring forth. It is for you, gentlemen, to decide whether this power shall be committed to a corporation or be held by the people.

The reductions in rates have been made, according to the annual report of Mr. Orton, greatly in consequence of these proceedings. "At the same time that competition has been operating to reduce the rates, we have been called upon at every session of Congress for the last four years to defend the policy and management of the company. The effect of these hostile proceedings had been to induce the executive committee to proceed more rapidly with the work of increasing the facilities and reducing the rates than the actual condition of the company's

affairs may at first sight seem to justify. But a little reflection will, however, be necessary in order to satisfy you of the wisdom of their action:" "Now our rates are so low that no money can be made by any competing company. Soon we shall be without any substantial competitor, and shall hold the telegraph business in our control." Therefore, "the Herald is probably correct in stating that further reductions will not be made by the companies now doing business for some time to come."

Mr. Orton makes certain criticisms upon the details of the bill, to which we will now call your attention.

This bill is not perfect, although it has been frequently amended, and we trust further improvements will be made by the committee.

Mr. Orton criticises a sentence in the first section, which provides that the Postmaster-General "shall, as soon as practicable," establish telegraph-offices.

There is an objection to having a time fixed for opening them, as it is difficult to specify when they can be opened. That plan was tried in England, and with almost fatal results. They were compelled to take the lines at a fixed time, and open them to the public before they were ready, and the consequence was an entire collapse of the telegraph business. This lasted four or five months, and nothing but the efficiency of Mr. Scudamore saved the system from failure. We have left the discretion in the Postmaster-General, whose only interest is to see that the rights of the public are preserved, and the earliest practicable time fixed for opening them to the public.

Mr. Orton suggests certain slight changes in the rates, to which there is no objection. He makes no objection to priority messages, but says double rates would be higher than some of their present rates. If the rates are too high, then make any proper reduction. Mr. Orton thinks 50 per cent. of the business will be priority business. In the European countries, where they have priority telegrams, there is less than 10 per cent. of this character, and we have supposed that would be the proportion in our country.

Mr. Orton says of the provision in the fourth section "that the company shall have the right to construct lines on all post-routes," that this clause gives the company the right of eminent domain, which existing companies do not have. He is mistaken in both statements; it does not give the right of eminent domain, and the act of 1866 gives to any telegraph company "the right to construct, maintain, and operate lines of telegraph over and along any post-road of the United States." He also says that the bill provides that lines of telegraph shall be erected to every postal-telegraph station, but no time is fixed within which it shall be done. Then insert a clause that they shall be provided whenever the Postmaster-General shall direct.

He says he should object to have the Western Union Company substituted in the place of the Postal-Telegraph Company, because it would make its manager a mere head clerk of the Postmaster-General, and all his employes subservient to the Postmaster-General. You will, perhaps, remember he also argued by the proposed arrangement the officers of the telegraph company would acquire such an influence over the servants of the Post-Office Department that they would neglect their public duty to perform that of the telegraph company. Now, he says all the telegraph employes would be subservient to the Postmaster-General, as he can make deductions from their pay. I leave him to reconcile these contradictory assertions.

He objects to the clause providing for prepayment by stamps; asks

why they cannot adopt such a provision; and gives the answer that there is no law whereby forgery of stamps could be punished; he says 30 per cent. of their business is "collect," and gave several instances to show the inconvenience of having all messages prepaid. Similar arguments were made against the prepayment of postage on letters; that many were written on business of parties to whom they were sent. The business can be done very much cheaper if prepaid by stamps. Shall the interest of the public suffer because of a trifling inconvenience to the few?

Mr. HAMLIN. What is the difficulty in prepaying the answer, if I telegraph to New York to-day and notify them that the answer is paid here? Why cannot it all be provided for in that way?

Mr. HUBBARD. That can be done. Mr. Orton refers to another class of messages. An operator in wheat at Chicago wishes to know every variation in the prices of grain at New York, and orders his correspondent to telegraph all changes, "collect." It is as easy for the correspondent at New York to prepay and charge the amount in account.

He objects to the provision in the sixth section, that the Postmaster-General (not the company, as he stated) may increase the rates in any State where taxes shall be levied on the business of the company, and says that is unjust to the existing companies, not unjust in itself! We think it is an absolute necessity to insure low rates. A telegram from Maine to California passes through fifteen States and Territories; the rate by night is 50 cents. If each State and Territory should levy a tax upon the gross receipts equal to 1 cent, it would add 15 cents to the cost, which would exceed the profits; therefore, if you are to have low rates, you must provide against any State undertaking to tax the company to death.

Mr. HAMLIN. Do you mean they shall not have the right to tax the capital?

Mr. HUBBARD. Certainly not; it does not apply to that.

Mr. Orton objects very properly to several provisions in the seventh and eighth sections. They are technical objections, and can be obviated by amendment which will not interfere with the bill. I wish to call your attention to minutes of Mr. Orton's speech, which appeared in the New York papers of Saturday: "Whatever may be the faults of the telegraph system of this country, the scheme proposed offers no adequate remedy for them. In this connection the fact was established by abundant evidence from official documents that the present average rate for messages in the United States is lower than in Europe for like dispatches, and that in this country the business is conducted without any expense to the Government, while in Europe the annual deficiency raised by taxation upon the people amounts to several millions."

I was not aware that any official documents were introduced by Mr. Orton, excepting some from France and Great Britain. The statistics of the telegraph in England showed that the business paid the expense of operating, interest upon the capital, and a small sum over and above; that in France it was conducted at a considerable loss. In connection with this point, Mr. Orton said the receipts in Great Britain from the telegraph were only about half as much as in this country. He did not add that they transmitted nearly twice as many messages and that the receipts were only half as much, because the rates were only half as high. As Mr. Orton did not present any statistics in regard to the European telegraph, I have taken pains since the last hearing to prepare a statement. The average rate in America is about 60 cents. The annual number of telegrams sent in Europe is 50,598,000, including

interior, international sent, and one-half of the transit dispatches; the receipts from the business \$19,288,000, making the average rate 36 cents, against 60 cents in this country; the average rate for inland messages is 29 cents. The total expenses of the business were \$19,277,000, showing that the receipts slightly exceeded the expenses.

In Europe they make extensions of their lines, as they do in America. When Mr. Orton says there were millions of dollars of deficit, he means that, if all the expenses of constructing new lines were charged in account as operating expenses, there would have been a small deficit. He does not make up his accounts in that way, and there is no reason why both should not be made up in the same way.

Europe has an independent system for each country. There is much greater expense in managing thirty or forty establishments than there would be for one—which will be all that will be required for America, and as our operators do much more work than foreign ones, our expenses should be little if any greater.

The number of telegrams in proportion to population is less in America than in the more favored countries of Europe. Here it is as one to two and a half; in England and the Netherlands, as one to one and eight-tenths; in Belgium, as one to one and sixth-tenths; in Switzerland, as one to one and three-tenths. In several of the countries where the rates are lowest the business is done at a profit, and, on the other hand, where the rates are the highest, there is a considerable deficiency; showing that other questions than high or low rates affect the profit or loss. The rates have been the lowest in Switzerland and Belgium; and have paid, not only the operating expenses, but the entire cost of construction.

The question is asked, "What effect will the postal system have in increasing the political power and influence of the Executive?" The powers that any telegraph system can confer upon the Postmaster-General may be considered under four heads: First, the privilege of sending dispatches for political or Government purposes free; second, the control over the press; third, espionage of private correspondence; and fourth, patronage. What power does this bill give the Government to send dispatches free? It provides that accounts be kept by the postmasters of all stamps sold, and of the telegrams received. The telegraph company has independent means of knowing how many are sent and the receipts therefor. It is for the interest of the post-office to collect the postage on each telegram, and of the telegraph company to collect the amount due it on every dispatch. These two agencies each act as a check upon the other. There is, therefore, less opportunity for sending free dispatches under this system than under the present. The Government can now send telegraph dispatches if they pay for them; they can send them in no other way under the proposed bill. Second. The control of the telegraph over the press. Under the Government system its control would be greater than under the proposed bill, but less than at present. As I consider the control now exercised by the telegraph over the press a subject of very great importance, and as Mr. Orton by his very able and eloquent argument convinced the committee that my statements upon this point were "mere rhetoric," I trust they will carefully examine the facts in the case, and pardon me if I dwell upon them at some length. I stated in my opening that the Western Union Telegraph Company and the New York Associated Press formed a double-headed monopoly, and that the officers of the one company were interested in the other.

Mr. Orton, the president of the telegraph company, is one of the trustees and part owner of the Tribune, and Mr. Jones, the publisher of the

Times, is one of the directors and part owner in the telegraph company. Most contracts of the Western Union with the Associated Press are terminable at the will of the company—the others at the expiration of thirty days, and they decline to make contracts on time. The press have no contract, are obliged to have the news, and can obtain it only of this Company. The Western Union Telegraph Company has it in its power to say, “the rates you pay to-day will be doubled to-morrow,” or to notify any one of the associated papers that “to-morrow it will be thrown out of the association, and will not receive any telegraphic news, excepting at the ordinary rates paid by the public.” A year ago in California there was an associated press consisting of the *Alta* and *Bulletin* in San Francisco and the *Union* in Sacramento. The *Bulletin* was owned in part by Mr. Simonton, the agent of the Associated Press, who was here at the last hearing. The *Alta Californian*, probably the most influential mercantile paper in California, had advocated the postal telegraph.

It had a dispute with the telegraph company in regard to the charges for telegraphing, and declined to pay their bill on that account.

On the 11th day of January, 1873, the Western Union Telegraph Company sent a note to the *Alta Californian* as follows:

WESTERN UNION TELEGRAPH COMPANY,
San Francisco, January 11, 1873.

GENTLEMEN: I am directed to notify you that, in consequence of your persistent and long-continued neglect to pay the bills presented to you from this office for telegraphing, the contract for news reports made December 20, 1871, with the Western Union Telegraph Company and the *Alta*, *Bulletin*, and *Union* will be terminated as against you, and on and after February 12, 1873; also that all existing arrangements for the transmission of other news reports to the *Alta* will terminate from this day.

Yours, truly,

JAMES GAMBLE,
General Superintendent.

Here is an instance of the exercise of the power of this company, in selecting a paper from an association and saying that it shall have no news, excepting at the rates paid for ordinary ten-word messages. The contract entitled them to thirty days' notice before they could cut them off from receiving news from the Atlantic coast, but that day terminated the contract for news from the California coast. The *Alta* offered to pay the amount in dispute, but it was declined. I will now read a very few of the notices of the California press upon the subject. It seems as though every paper published protests against it.

[From the *Evening Post*.]

That the *Alta* did not promptly pay these bills is made the excuse for the order from headquarters at New York, shutting it off from telegraphic facilities, and that even after the *Alta* was so far whipped as to agree to pay the bill, right or wrong. This is a shame and a lie. Every newspaper knows it to be such. The *Alta* is the oldest paper in California. It is probably the most profitable. Of its entire solvency there is not the slightest doubt.

[From the *Marysville Appeal*.]

The telegraph monopoly is about enjoying in the pleasant pastime of rewarding its friends and punishing its enemies.

[From the *Sacramento Record*.]

THE ROD AND THE RING.—The high-handed endeavor of the Western Union Telegraph Company to crush out the *Alta* because of its opinion on the postal telegraph system bids fair to result in a more thorough exposure of the tyrannous insolence and cold-blooded extortion of this monopoly than could have been hoped for under any other circumstances. Incidental to this exposure, the cringing sycophancy and deliberate dishonesty of the Associated Press organs is being made apparent.

[From the Commercial Herald.]

It makes one's blood tingle with indignation to note the highhanded, outrageous proceedings of the Western Union Telegraph Company toward that portion of the press which has honesty and manliness enough to advocate Government control of the telegraph lines. That worst of all monopolies is showing its cloven foot to the best possible advantage, and it will require only a little more of the disgusting exhibition to render it imperative that the Government should deal with it in a summary manner.

So they go through all the papers of the State, with scarcely an exception.

Mr. MERRIMON. Would it be competent for Congress, by laws in the nature of police regulations, to provide that if any telegraph company should discriminate against any person or newspaper who would pay the regular rates, such offense should be punished?

Mr. HUBBARD. I have no doubt Congress might pass such laws, but it could only say that the rates should be equal to all, which would not help the matter, for if the Alta alone received the news at the same rate with associated papers, it would still be twice as high as to one of them.

Mr. MERRIMON. Has the Government the power to make police regulations, touching any matters that come within the compass of its power?

Mr. HUBBARD. Certainly.

EIGHTH DAY.

JANUARY 29, 1874.

Mr. HUBBARD. At the close of the hearing on Monday we were considering the power of the telegraph company over the press, as illustrated in the case of the Alta Californian. Three papers in California received the associated dispatches—the Union, at Sacramento, and the Alta and Bulletin at San Francisco; Mr. Simonton, of the associated press, as one-third proprietor in the Bulletin, had a direct interest that it should have no competitor; the Alta had published certain articles in favor of the postal telegraph, and had a dispute with the Western Union in regard to its bills for dispatches, and without an hour's notice, the Alta was cut off from the receipt of all telegraph dispatches from the Pacific coast, and, at the expiration of thirty days, from all dispatches from the Atlantic coast.

Mr. RAMSAY. Is the Alta an important paper?

Mr. HUBBARD. It is said to be the wealthiest and to have the largest circulation of any on the other side of the Rocky Mountains. This paper is not the only one that has suffered. Two or three years earlier the Herald, at San Francisco, had an arrangement with the Western Telegraph Company, by which it received five hundred words a day. By means of a code it extended these to twelve or fifteen hundred, thus giving a larger amount of telegraph news than the other papers. They were dissatisfied, and made a new arrangement with the Western Union for a sliding-scale of rates: the greater the number of words the less the compensation per word applied to all papers receiving the news. By this arrangement the rates to the Herald, which before had been 7 cents a word, were increased to 15 cents, while to the associated papers they were reduced from 2.4 to 1.28 cents a word. The Herald was unable to pay these rates and failed. The Herald, at 15 cents a word, paid less than was charged for ordinary messages. The Western Union said, "This proposition is open to all; if you take as many words as the other papers you shall have the same rate." So, while in the letter equality was preserved, there was in reality no equity; the Western Union have complete power to elevate and depress prices, always keeping them below the

charges for commercial messages. The exercise of its power is not confined to the Pacific coast. Two years ago notice was sent either by the telegraph company or the associated press to the southern papers, that if they criticised the telegraphic dispatches they should be cut off from receiving them. The Petersburg Index criticised them and it was cut off; after a short punishment it was restored, and the fact communicated to the southern papers.

This control over the press is exercised in other ways. I hold in my hand a contract between the Western Union and the Western Associated Press, to which reference was made the other day. It contains the following clause:

"That the said Associated Press shall employ the said telegraph company exclusively to transmit to and from all places reached by its lines all telegraph-messages relating to news or newspaper business, and that they will not in any way encourage or support any opposition or competing telegraph company."

A circular was published with this memorandum by the executive committee, and sent to the members of the association, containing this sentence:

"The attention of our association is invited to the clause in our contract with the telegraph company which forbids us to encourage or support any opposition or competing telegraph company. And it is proper I should say in this connection that that clause was to the telegraph company a valuable consideration for the favorable terms upon which they contracted with us."

This is subsidizing the press not to publish any articles which shall encourage or support any opposition or competing telegraph company. The bill before you, gentlemen, charters a competing telegraph company; we are told by Mr. Orton that the press does not support the postal telegraph, and there is no public demand for it. They are first bribed not to encourage it; and then because they do not, it is made an argument against it.

At the close of the hearing last week a synopsis of Mr. Orton's argument was sent to the associated press. I applied to the agent asking if like privilege would be afforded in telegraphing a reply. "Certainly I should have the privilege." I furnished the reply, but it was not published. Someone at the office of the associated press, in New York, decides what shall or shall not be published. At the fountain-head from which proceeds the morning and evening news furnished to papers all over the country, there sits one who can either by insinuation or assertion color the entire news of the country, and affect favorably or unfavorably any measure which may arise. Heretofore, gentlemen, there have been rival associations connected with opposition telegraph companies. Although, as Mr. Orton said, there was no reason why a second association should not employ the Western Union, the fact is they do not, and when competition ceases these associations cease to flourish. Why it is I cannot state; I only give facts.

The Saint Louis Globe was connected with the American Press Association, receiving its news over the wires of the Pacific and Atlantic Telegraph Company, which have been very recently turned over to the Western Union. When that took place the Globe applied for the Associated Press news, was refused, and its failure was imminent. Fortunately there was a German paper that was entitled to the Associated Press news, and sold their right for \$40,000 to the Globe.

But, gentlemen, the exercise of the power is not confined to the press; it is felt by the merchants of the country. They are dependent upon the telegraph for the news of the market, and, as Mr. Orton has stated, in more instances than one, transactions upon the exchanges have ceased because the prices had not been received.

The news is collected abroad by the agents of the Associated Press and communicated to the Commercial News Bureau in New York. The instant it is received, it takes possession of the wires necessary to send the news to all the large cities, and in half a minute to a minute and a half it is received at New Orleans.

There were competing associations for collecting and transmitting this news, but the Western Union brooked no opposition. As they control the wires it is impossible that news should be sent by any other source until ten or fifteen minutes after it has been received in the most distant part of the land. It is apparent how this power can be used for private speculations.

Telegrams, Mr. Orton said, had been sent, giving the markets of the Old World when the cable connection was broken. What has been done can be done again, and not only false news of one kind and at one time be sent, but other kinds at other times. Mr. Orton says that they took this business in their hands, because they thought they could manage it better than the mercantile community, and I have no doubt of his sincerity.

It is necessary for the protection of the merchants that they, and they only, shall collect their news, to be transmitted by the telegraph company. A censorship over the press may be beneficial. Even this control over the market may be used beneficially as well as despotically. But, in this country, whatever benefits can result from a censorship are less than the evils sure to follow. There is no relief for this power over the press or the commercial news except in some new system, or in competing lines.

Mr. Orton, in his last annual report, says all competing lines are believed to be losing money, and soon there will be no competition, and then, when competition ceases, rival associations cease, and the whole telegraph business, with the entire control of the press and of the commercial news, will remain in the Western Union Telegraph Company.

The question is naturally asked, can this be remedied under the proposed system, where there will be but one company? The alliance existing between the New York Associated Press and the Western Union Company will cease. The powers now possessed by the telegraph company will be divided between the Postmaster-General and the telegraph company so that it will be impossible that there should be such a co-partnership. But this is not the only remedy. The Associated Press are not only furnished with the Associated Press news at a low rate, but with "specials," and with messages relative to their own business and private affairs, at greatly reduced rates, or free.

Under the proposed bill, the rates for "specials" are not only cheaper than the present rates, but, taking the proportion of associated and of special news, the rates provided by the bill are lower than those now furnished to the Associated Press.

The contract between the New England Associated Press and the Western Union Telegraph Company establishes higher rates for specials and associated dispatches than the proposed bill.

If, therefore, the press can receive news as cheap as at present, and all have equal rights, then this monopoly will be broken up. New associations will be established, and we shall have competition in the furnishing of news. So with the commercial news. The bill provides that commercial news associations may transmit dispatches at the rates charged for "specials." Associations of merchants will be formed for collecting and transmitting the news of the markets; and who can doubt that merchants know what they want better than any telegraphic company?

There is another peculiar arrangement of the Associated Press which will be corrected. If any special news is obtained by any one of the New York Associated Press, each of the others has the right to it by paying a certain proportion of the expenses of collecting it. The Herald sent Mr. Stanley to search for Dr. Livingstone; under this contract the other papers had a right, if Stanley found Dr. Livingstone, to claim joint ownership of the news; if he failed, they were under no obligation to pay any share of the expense.

The Herald has long and vainly struggled against this despotism; but it must have the facilities enjoyed by the Associated Press, and it is now in harmony with the Western Union. It published some comments a short time ago on the Western Union, to which Mr. Orton replied in a letter annexed to his report. I sent an answer to the Herald, but no notice was taken of it. About the same time the Times published a criticism upon the Western Union, which Mr. Orton made the text for a letter. The sub-editor wrote me asking for data for a reply. I answered, and it was returned with a curt note saying that the editor did not require anything of the kind. Of course he did not, for the publisher of the Times is part owner in the Western Union.

Mr. MERRIMON. Is there any valid reason why rival telegraph companies of equal magnitude will not be organized?

Mr. HUBBARD. Theoretically there is none; practically it is impossible. It has been tried over and over again, and the result has been an increase of the power of the Western Union. Between 1860 and 1864, there were seven large companies in different sections of the country that formed an alliance with each other, while smaller companies existed in competition. These are all now merged into the Western Union.

Mr. MERRIMON. Can you explain the reasons? We see that rival railroads spring up, why not telegraph companies?

Mr. HUBBARD. The United States Company was started as a rival line, stretching from east to west, and north to south. The allied companies perceived the result of competition with this national company was very doubtful, consolidated all these interests into one organization; secured the services of Mr. Orton, the former president of the United States Telegraph Company; adopted a new line of policy, which has been steadily pursued: a reduction of rate, increase of facilities, combination of rival interests, looking to the control of the telegraph business of the country by one company. Four or five rival companies have been subsequently organized, the Pacific and Atlantic, the Atlantic and Pacific, Southern, and one or two others. They have struggled feebly, but, as Mr. Orton has stated, there are none of them making money. They can obtain no means for extensions, and have made none for two or three years; and probably are not in as good condition as they were two or three years ago. The rates are not high enough to maintain them, and as a necessary consequence these lines one after another fail and the Western Union, always ready to buy, absorbs them. An opposition telegraph company was started from New York to Cincinnati when the rates were \$1; it reduced them to 75 cents; the Western Union followed and fixed the rates at 60 cents, and then the other company follows; it loses money while the Western Union makes money, on its general business, even if it loses on this; as a necessary result it fails, the Western Union buys out the lines, and the rates are raised to \$1. This is the practical result of competition in the case of the Pacific and Atlantic Telegraph Company.

Another objection made to the union of the telegraph with the Government is fear of the *espionage* of private correspondence. The bill provides

that messages may be sent in cipher, which removes the objection; but if that were not the case, the messages will be so numerous that it will be impossible for any operator to remember what he is transmitting or copying. Where a clerk or operator transmits many telegrams he cannot remember their contents.

Next in regard to the increase of Government patronage. The present number of telegraphic employes is about 10,000. Under this system there would be about 1,000 messenger-boys employed by the Department, and about 500 other clerks; probably only one-half the present messenger-boys would be necessary, as the carrier system would be adopted in part. All the remaining employes would be hired and paid by the Postal-Telegraph Company.

I have been requested by a member of the committee to make some statements in regard to the cost and capital of the Western Union Telegraph Company. The Postmaster-General in his report to Congress at the last session said he believed the lines had cost less than \$10,000,000, and that lines of equal value could be erected at a cost of \$11,880,000. The Western Union have commented at length upon these estimates as very low. It is, therefore, hardly safe to adopt it without further inquiry.

I think the true way of getting at the value, a way to which the Western Union could not object, would be to find out what their lines have cost. In 1866 it had eighty-six thousand miles of wire strung on forty-four thousand miles of line, or about two miles of wire on each mile of line. In 1873 it had one hundred and fifty-four thousand four hundred and seventy-one miles of wire strung on sixty-five thousand seven hundred and fifty-seven miles of line, or about two and one-third miles of wire to each mile of line. The increase was sixty-eight thousand and twenty miles of wire on twenty-one thousand six hundred and twenty-six miles of line, or about three and one-fourth miles of wire to each mile of line.

These extensions, according to the annual report, cost \$4,400,000, equal to about \$207 a mile of line, making the total cost at this rate \$13,200,000. This estimate is too high, as the proportion of wire to line strung since 1866 is nearly twice as great as before. Dividing the miles of wire by the total cost, it gives \$64.50 as the average price for each mile of wire, and at this rate the total cost would be \$9,963,000. The average of these estimates is \$11,520,000. The Postmaster-General said it was under \$10,000,000, and his estimate is corroborated by this statement.

A very rough estimate, perhaps, may be obtained by analyzing the capital account, which has stood since 1866 at \$41,000,000, besides a debt of \$4,500,000, contracted in the fruitless endeavor to find a route across Behring's Strait to Europe. The capital consists of stock dividends prior to 1866, \$17,810,000; stock dividends to the American Telegraph Company at the time of the union, \$8,000,000; stock dividends at the same ratio to the United States Telegraph Company, \$6,800,000; making a total of stock dividends of \$30,600,000, leaving a balance of \$10,400,000.

I have prepared a statement of their property, as it stood on the first day of July last.

Capital.....	41,000 000
Less capital stock on hand.....	7,300 000
	33,700 000
Debt.....	4,500 000
Total liabilities.....	<u>\$38,200 000</u>

Assets:

154,471 miles wire.....	\$11,500 000
Western Union bonds.....	1,000 000
Stock in telegraph companies.....	3,378 000
Real estate.....	318 000
Other items.....	368 000
Franchise, good will, contracts, &c.....	21,700 000
Total.....	<u>\$38,204 000</u>

Net earnings in 1873, \$2,757,000, or a little over seven per cent. on the entire amount of liabilities.

If the question should be asked, how much it would cost to duplicate the lines, it would not be safe to say that because \$12,000,000 would purchase all the necessary material and erect all the lines, that the present system could be duplicated for that sum. The Western Union has valuable contracts with all the principal railroads of the country. These contracts, made when the railroads were constructed, and renewed from time to time, give them rights which no new company could obtain. It will be easy to illustrate my meaning. The Western Union wish to erect a line on a railroad one hundred miles long. By their arrangement, the railroad company takes the poles, drops them wherever they are wanted; their wire in the same way, and gives their operators the use of a hand-car, so that they erect their poles and wire without any trouble at a very moderate cost. A competing company wishes to erect a line along that road. The railroad will move its poles at the same rate that it does other freight, or for the other company, but for the new company it will stop only at regular stations, on an average, about ten miles apart. They must either construct their line on the highway or move their poles to the required places by the wagon-road, and then across the fields as they best can to the line of the railroad. That is one of the difficulties in constructing an opposition line of telegraph.

I wish to allude once more to the power granted to Congress by the eighth section of the first article of the Constitution. The Constitution is an enumeration of the powers upon which Congress can act, and by examining those powers it will be seen that they are, so far as relates to international or inter-State transactions, to be exercised exclusively by Congress, and that the Supreme Court has decided that in all international and inter-State matters these powers are exclusively vested in Congress. They empower Congress to lay and collect taxes for the United States; to borrow money on the credit of the United States; to regulate commerce between the States; to establish laws of naturalization and bankruptcy; to coin money; to punish counterfeiting; to establish post-offices and post-roads; to grant patents; to constitute tribunals inferior to the Supreme Court; to define and punish crimes on the high seas; to declare war, raise and support armies; to provide a navy; to make rules for the government of land and naval forces; to provide for the calling forth the militia; to provide for arming and disciplining the militia; to exercise exclusive legislation in the District of Columbia.

There is not, one of these powers relating to inter-State transactions which is not exclusively within the control of Congress. It seems to me there is no difference in principle between the duty of Congress to build steam-monitors, both monitors and steam being unknown when the Constitution was adopted, and to furnish im-

proved methods for the transmission of correspondence between parties at a distance. If this right is devolved exclusively upon Congress, it cannot commit it to a third party any more than it could delegate the maintaining of a Navy, or the coining of money. Congress must act through its own servants. If this is so, then the act of 1866 is contrary to the provisions of the Constitution, so far as it relates to inter-State communication, and neither the Western Union nor any other company has any right to carry on this business.

It necessarily follows from these considerations, as well as from the fact that no State can pass laws operative beyond its own jurisdiction, and that Congress has passed no law regulating inter-State correspondence, that all such correspondence is now unregulated by law.

In conclusion, there are several propositions in connection with this discussion which we trust will receive the approval of all the members of the committee, and aid them in arriving at a satisfactory conclusion of the matter.

First. There are now two methods in operation for the transmission of intelligence between parties at a distance. The first devised by the people for their benefit and where it is designed to make the postage at such a rate that it shall, in a series of years, just equal the expenditures.

It is generally supposed that the Post-Office Department are running in debt more and more every year. The fact is that, while the gross amount of expenditures is increasing, it is *yearly* decreasing in proportion to the business. That is, it costs less to send each letter last year than it did four years ago; and in four or five years the deficiency will entirely disappear and the Department will become self-sustaining. A careful comparison of its expenditures with those of Great Britain will show, so far as office business is concerned, that our Post-Office is managed more economically than that of Great Britain.

The other conducted substantially by a single corporation, the Western Union Telegraph Company, in which pecuniary profit is the prime consideration to be obtained by transmitting intelligence at the highest rates the public will pay.

We have the statements of Mr. Orton, in the New York Herald, that they have made as great reduction of rates as they intend to make at present; further reductions are unnecessary because competition has ceased.

There is no difference in the nature of the service itself, which calls for the employment of these different agencies, and America is the only country where distinct instrumentalities are employed.

The general administration of the office business of each is so nearly alike that a considerable saving in these expenses will be obtained by employing one agency for both.

Second. The telegraph, as at present administered, requires for its effectual operation, in the judgment of Mr. Orton, that its manager should have absolute power, as that alone can successfully operate the telegraph."

This absolute power is witnessed in the control of the telegraph over the press. The press are dependent for their daily news upon telegraphic dispatches, and can, in many parts of the country, obtain them only through the Western Union. It is believed that there is no prominent daily paper in the country that does not obtain news from this company, which has a right to cut off any paper from receiving it by raising the price so high that the paper cannot afford to pay it. This right they have exercised, and have cut off papers from their ordinary supply of telegraphic news. They have made contracts with the Associated Press, by which it engaged that it would not "in any way encourage any opposition or competing telegraph company," and "that clause was to the telegraph company a valuable consideration for the favorable terms upon which the contract was made;" that is, the press was subsidized by receiving its news at lower rates than it could otherwise have obtained by agreeing to oppose any opposition telegraph company. It

cut off a paper that criticised its dispatches, and in these ways has exercised a censorship over the press.

Third. The injurious effects of this unlimited control have been heretofore mitigated by the fact that associations have been organized in connection with competing telegraph companies, but it is believed that the Western Union Telegraph Company are correct in their judgment that "the extension of competition has ceased," and "that the time is not far distant when the Western Union Company will be without a substantial competitor in this business." The effect of the merging of competing lines with the Western Union Company is illustrated in the very recent case of the Saint Louis Globe. This newspaper formerly received news through the American Associated Press, over the lines of the Pacific and Atlantic Telegraph Company. These lines have been recently purchased by, and amalgamated with, the Western Union Company. The Globe, for the purpose of obtaining the commercial news, was obliged to purchase the right possessed by a German paper to the associated news, and to pay therefor the sum of \$40,000.

Fourth. The commercial news of the Old World is obtained by the agents of the New York Associated Press, stationed at various points in Europe; transmitted over the cable and the lines of the Western Union to the Commercial News Bureau of the Western Union Company at New York. The telegraph company and the Associated Press of New York are jointly interested in this news, which is transmitted from New York to the agents of the Western Union in all important cities of the Union, sold to its customers, and then to the press. The Western Union Company monopolizes this business, and allows no competition in gathering and distributing this news; practically it can be obtained in no other way, as, in the words of the Western Associated Press, "there is no opposition news agency, and our contracts give us for our territory a monopoly of the news of the world, on the wires from Liverpool to San Francisco."

Fifth. As the laws of one State are inoperative beyond its territorial limits, and as Congress has passed no laws regulating inter-State telegraphic communication, and as all the most important telegraphic news for the press and commerce crosses State lines, all this business is unregulated by law, subject only to the will and pleasure of the Western Union Company.

This business is of too great importance to be any longer uncontrolled by law, and although it has not been shown that any great evils have been experienced in the past, yet it is not safe to intrust such absolute power to any single man or corporation. Three plans have been suggested for regulating this business. The passage of laws in the nature of police regulations; the establishment of a new system regulated by similar laws; and a governmental telegraph. The last is not now pressed, and is therefore not under discussion. The first is in the nature of a palliative, and it may be doubted if it would be successful in controlling the press business where the interests of the telegraph company and the Associated Press are so knit together, and closely allied, especially as the connection cannot be removed by such regulations.

Sixth. The difficulties in dealing with the press dispatches arise from the close connection between the New York Associated Press, which collects the news, and the telegraph company that transmits it. This connection will be terminated by the organization of the postal-telegraph system, and will be a very important step toward a reform. The proposed bill reduces the rates so greatly that it is believed "specials" under the postal system will be as cheap as the Associated Press news under the present. The rates for night "specials" from Washington to a single Boston paper are \$3 for a hundred words, or \$4.50 if the same special is delivered to two papers without any provision for reduced rates, where it is dropped at way stations. Under the proposed plan the rates for the same service to one paper would be \$1.50; to two papers, \$1.70, with reduced rates when dropped at way stations. These rates are less than those now charged the Boston papers for the "specials" and Associated Press news. Under the postal-telegraph system the agency now employed for the collection and distribution of commercial news will be reorganized, and its business performed by associations organized by merchants for that purpose. The low rates offered to such associations will not only correct existing evils, but prevent many other abuses to which the present system offers a great temptation. These associations can be organized as freely as if there were rival and independent telegraph companies. These provisions will, it is believed, work as great reform in the relations of the telegraph to the press as resulted from the substitution of the governmental for the corporate system in Great Britain. The number of towns to which the news reports are sent is nearly three times as large as formerly, and the number of subscribers for the commercial news is increased in a larger proportion. The telegraph companies sent reports to one hundred and seventy-three journals, the governmental telegraph sends to four hundred and sixty-seven, while the number of words daily transmitted during the session of Parliament was increased from about six thousand to twenty thousand, and in the same ratio for the rest of the year.

Seventh. The proposed system will reduce the rates of ordinary correspondence at

least one-third, which, according to the testimony of the English officials, is as great a reduction as can safely be made at once, and therefore as great as could be made if a purely governmental telegraph should be established.

We have the opinion of Mr. Orton, that the business can be done at these rates. He says that a company established under this system, if carried into successful operation, would result in the annihilation of the property of the Western Union Telegraph Company. To remedy any apparent injustice from such a result, the bill provides for the purchase of its property at an appraisal, if it desires to sell its lines. The bill also provides for further reduction of rates after the payment of ten per cent. annually upon the capital, by appropriating the balance of net earnings for the benefit of the public by expending them in the construction of lines and reduction of rates.

Eighth. Neither the political power nor the patronage of the Government will be sensibly increased by the proposed measure. The Postmaster-General in advocating a governmental telegraph, says that under this system the Department would become a mere agent to receive messages for the benefit of a private corporation. Mr. Orton says the greatest objection he should have to taking this bill would be that he should no longer be an independent manager of the business, but chief clerk of the Postmaster-General. It is evident that these conflicting objections cannot both be true, and on making the amendment suggested by Mr. Orton to give greater independence to the telegraph company the truth will lie in the mean. It is one great merit of the proposed plan that it removes the controlling power now possessed by the telegraph company, but instead of lodging it in the Postmaster-General, regulates and divides the powers between the Department and the company so that the benefits of each system are obtained free from the objectionable features of either.

The business of the telegraph is of national importance, and its service can be most economically and efficiently performed by a single company in unison with the Post-Office Department. Neither the Western Union Company nor any rival or independent organization can perform it without adding greatly to the expenses, and at the same time reducing the facilities and diminishing the efficiency of the service.

The bill reserves to Congress the right to terminate the contract at any time, or to purchase the property of the company at an appraisal. Though there are objections to this, as to any other system that may be proposed, it removes many evils of the existing system, and the benefits sure to result are much greater than any imaginary or anticipated ills, and therefore an experiment, from which great advantages to the people are certain to follow without any expense to the Government, should be tried.

In conclusion, gentlemen, I am exceedingly obliged to you for the great patience with which you have listened to me.

Mr. RAMSEY. What assurances can we give at any time that the capital stock of this company will be taken?

Mr. HUBBARD. From the fact that the gentlemen associated with it are abundantly able and willing to provide all moneys required to carry it on.

Mr. RAMSEY. To your knowledge?

Mr. HUBBARD. To my knowledge.

NINTH DAY.

FEBRUARY 6, 1874.

Mr. HUBBARD. Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: Judge Edmunds, the postmaster of Washington, is present at the request of the committee, and will answer any questions in reference to the practicability of the union of the telegraph and postal service under the postal-telegraph system.

Judge EDMUNDS. My attention was called to the bill some time ago, and I made a particularly critical examination of it, with a view of seeing what the effect would be upon the public interest, having been myself in favor of strictly governmental telegraph system, but seeing the prospects were not very bright for that I had been looking around for something else.

It occurs to me that so far as the delivery of messages in any locality where the letter-carrier system is in force, the work is practically

duplicated by having a force of letter-carriers and a force of telegraph-messengers. It was my impression, upon reflection, and looking at the system here, that practically we could make about as good a delivery in all the central portions of the city as is now made by the telegraph-office. That is my opinion. I do not know exactly how promptly they deliver messages. I think the letters that reach my office for delivery are in the hands of the persons to whom they are addressed as promptly as the telegraph-messages are delivered, as a general thing. That would not cover all the messages, because some of them would be received after our delivery for the day ended. In the outside districts, where we make only two deliveries a day, in the borders of the city, at the navy-yard, and near Georgetown, there might be some little delay, except for the fact that most of the business men of all classes have their offices in the central part of the city, and there get their mail, so the larger portion would be reached by our frequent delivery. I think we could make, practically, as good a delivery as the telegraph-office does with a very small addition to our force for evening work.

Mr. JONES. Do not the mails come in at regular intervals, so that these men have ample time at all times?

Judge EDMUNDS. Yes, sir. But if you are in the habit of receiving telegrams every day, as I am, you will have noticed that the messenger-boy, when he comes with his telegrams, has five or six other messages in his book. Of course they do not all come in at the same instant. The boy has to wait till they accumulate. When I see a boy with five or six or eight messages in his book, I suppose he has waited long enough for them to come before he started out.

Mr. JONES. I suppose when the letter-carriers start out they have a great many letters?

Judge EDMUNDS. Where they make five deliveries a day they are not overloaded. They have a good many, to be sure. They could deliver a few more without additional cost or any delay. We commence delivering at 7 o'clock in the morning and close the street-delivery at 4.30; that is, the carriers leave the office at 4.30.

Mr. MERRIMON. Do they deliver letters to every house?

Judge EDMUNDS. Yes, sir; to every house to which they are addressed.

Mr. MERRIMON. They are not locked up in boxes?

Judge EDMUNDS. No, sir.

Mr. MERRIMON. So they have custody just the same as postmasters?

Judge EDMUNDS. Yes, sir.

Mr. MERRIMON. How old are the men?

Judge EDMUNDS. They cannot be under eighteen. They are generally men right in the prime of life, from twenty-five to forty. They are under bonds.

Mr. RAMSEY. They are intelligent men?

Judge EDMUNDS. Yes, sir; we have intelligent men; we select men who can read and write, for they have to keep little postage-accounts. They are men of good physique; I find that my letter-carrier force is healthier than my clerical force in the office; while the work is moderately severe, yet it is healthier.

Mr. RAMSEY. How many hours are they on foot?

Judge EDMUNDS. In the outside districts they have to commence as early as half-past 5 o'clock. They have plenty of time for their meals between the deliveries. You take any district where we make five de-

liveries a day and it is a double district; there are two carriers on it. One will be back after letters while the other is out.

Mr. RAMSEY. When do they quit work?

Judge EDMUNDS. At 8 o'clock.

Mr. HUBBARD. In your opinion, will the postage of 5 cents to be paid on each telegram pay the expenses assumed by the Department?

Judge EDMUNDS. Of course it is impossible for me to give anything but an opinion. My impression is that it would be more than compensating in a letter-carrier office; considerably more. All our local postage now is but 2 cents; and I do not see how it would be any more work to deliver a telegraph-message than a local letter. I think it would require a slight additional force here in the city; I cannot speak of other cities. I think in order to make the evening delivery and to have always one or two men at the office for emergency dispatches during the day, we might require a few more carriers.

Mr. MERRIMON. Would you dispense with registry and receipt-books that the carrier takes in the delivery of telegrams?

Judge EDMUNDS. We do not take receipts except for registered letters.

Mr. HUBBARD. I don't think there would be any receipt required for messages. They do not have them in England.

Judge EDMUNDS. I do not see why they should not be treated exactly as letters. They are practically letters. They are of no more importance on the average.

Mr. MERRIMON. The telegraph system is essentially commercial, and it affects the market somewhat in various localities. Various business transactions are made through the telegraph. It might be very important to know that A. B. got a telegram at a certain hour; that he received a certain notification. If you had to rely on a carrier's recollection they could not testify that they delivered that telegram.

Mr. HUBBARD. Is it necessary to make the messenger or letter-carriers the agents of the commercial community to prove the delivery of messages and letters? I did not suppose that was a part of the legitimate business of either the postal or the telegraph service.

Judge EDMUNDS. It would make very little difference whether the receipts were taken or not as to the time of delivery, for the messengers are now unable to get a receipt of the principal in a great many cases. They get the receipt of the clerk or agent.

Mr. HUBBARD. Abroad they deliver registered letters by carriers.

Judge EDMUNDS. The carriers deliver two-thirds of the registered letters here, and for them they have to get two receipts.

Mr. JONES. You propose to get receipts for these telegrams?

Judge EDMUNDS. That would be as the law or the Department should direct.

Mr. HUBBARD. You must have the business done as simply as possible.

Mr. MERRIMON. I telegraph A. B. in New York that I have got five hundred beeves, and that I will take such a price for them. A. B. replies to me through the telegraph, "I accept your beef." By the time I get his telegraph I have changed my opinion. Here comes the telegraph-boy with the message and delivers it to me; then I abandon the bargain. A. B. has been greatly damaged by my failure to comply with my proposition; but how is he going to prove that I got my notice?

Judge EDMUNDS. That might also occur with a letter.

Mr. MERRIMON. This registry is a very important appendage.

Mr. HUBBARD. If necessary, there can be registered messages as there are registered letters, and that is the case in some countries of Europe. I should suppose that the man who has accepted the offer would prove that he has written a telegram, deposited it at the telegraph-office, and that it went forward.

Mr. MERRIMON. How is he going to prove that it went forward?

Mr. HUBBARD. All that he has to prove is that he delivered it to the proper officers for transmission. Then the law presumes that the officers performed their duty, and the burden of proof will be transferred to the defendant to show that he did not receive it.

Mr. SAULSBURY. In the case of the indorser of a note the law is that the mailing of a letter to his address, giving the proper notice of protest, shall be evidence that he received it; but in the case of a special contract you must, before you can fix the liability on a person, carry home the notice to him.

Mr. MERRIMON. That is the law.

Mr. HUBBARD. A man orders by letter a hundred bales of cotton. The answer is made: "I have purchased a hundred bales of cotton." He can have no proof that that letter is delivered. All that he has to prove is that he received a letter, answered it, and deposited it in the post-office.

Mr. SAULSBURY. Where you wish to fix the liability of a party in a contract, the law provides you must carry the notice home to him.

Mr. MERRIMON. I had a case once, that illustrates this view: A and B were partners in an apothecary establishment. They bought goods from Schefflin, Haines & Co., of New York. Within a year they dissolved partnership. They published notice of their dissolution in the paper of the town in which they lived. After they had dissolved, one of the partners went on and increased the debt with Schefflin, Hays & Co., using the firm-name, running on a year or so. After a time he failed. Schefflin, Haines & Co. sent their debt out to me to collect. I went to the solvent partner, who had gone out of the firm and given the published notice of dissolution. He said he did not know anything about it; that the debt was contracted without his authority, and refusing to pay. I told him I thought he was liable, and that I should sue him. I did so. The judge of the court held he was not liable. I appealed it to the supreme court, and the court held that he was liable. He held that this notice in the paper was not sufficient. If he could have shown that Schefflin, Haines & Co. saw this paper and the notice of dissolution, it would have answered; but they were bound to give them notice.

Mr. HUBBARD. Supposing he had proved he had mailed a letter, containing a notice of dissolution, to Schefflin, Haines & Co., would not that have been sufficient?

Mr. SAULSBURY. It might have been a question for the jury to weigh; but the general rule in contracts of that kind is this, that you must prove beyond question that the party had notice.

Mr. MERRIMON. I think if you cut out the registry and receipt-book of the telegraph office, you take out an important appendage in the interests of trade.

Mr. HUBBARD. They are all cut out in England and France, and in most of the other countries of Europe. Practically speaking, it works without trouble. Judge Edmunds, how is it in regard to the general office-business of a telegram and letter—are they not substantially alike?

Judge EDMUNDS. So far as relates to the delivery they are.

Mr. HUBBARD. As to the sale of stamps?

Judge EDMUNDS. It would throw no additional cost on the office. I have two stamp-clerks, one of whom is at the stamp-window all the time. With just as little trouble, and at the same salary, they could sell the telegraph-stamps as well as the stamps and stamped envelopes. That branch of the service would bring no additional cost. The two men could do twice as much as they now do if it was forced upon them.

Mr. HUBBARD. Practically speaking, it would not increase the force of your office?

Judge EDMUNDS. Not in that department. I have got to have the two men if I do not sell but \$200 worth of stamps a day. If I sell \$2,000 worth it is just the same; I pay nothing more.

Mr. MERRIMAN. It would require more men to receive the telegrams. You have to write the messages. You would have to have an operator?

Judge EDMUNDS. Not by this bill. That the company is required to do. When the Post-Office Department takes hold of the matter the message is written out, sealed up in an envelope, and addressed. We have to deal with the messages precisely as we do with letters, unless some special regulation is made that we shall take receipts for them. If the Department think that important, or the law provides it, we would take receipts. In all respects the business would be done precisely the same as it is done with letters. They come to us as letters. They are sealed. Practically we would know no difference between them and letters. They are letters. They are carried on wires instead of on railroads. That is the only difference. As a general thing I do not think they are of any more importance.

Mr. MERRIMON. Would you not have to deliver them more rapidly than letters are usually delivered? The delivery ought to be in proportion to the dispatch of the message. It is contemplated in sending a telegraph-message that it is not only sent as rapidly as may be across the wire, but that it is delivered as rapidly as possible.

Judge EDMUNDS. Yes, sir.

Mr. RAMSEY. How many letter-deliveries do you have?

Judge EDMUNDS. Five deliveries a day.

Mr. RAMSEY. That is about as often as the telegrams are delivered?

Judge EDMUNDS. Taking the average, from the time a letter reaches my office to the time it reaches the hands of the person it is addressed to, I think it is no greater than the average time between the receipt and delivery of a message. The average time on a letter is, on the whole, not greater than it is on a message. I may be mistaken. I cannot say positively as to other deliveries, but I know as to mine. If I found it necessary to make a more frequent delivery I could just as well arrange my force so as to have my men leave my office every hour.

Mr. MERRIMON. You would want a greater force?

Judge EDMUNDS. Not for the business portion of the city.

Mr. MERRIMON. In my town the banks sometimes receive twenty messages during banking hours at twenty different times. The bank opens at 9 o'clock.

Judge EDMUNDS. In how large a city?

Mr. MERRIMON. About nine thousand inhabitants. The banks open at 9 o'clock and close at 3. They receive a message ten minutes after the bank opens, ten minutes after that another, and so on through banking hours. I know a telegraph-message does not come there at stated periods. It is true the boy has generally two or three messages. I have sometimes been astonished at the number of deliveries during business

hours, and wondered if messages were everywhere delivered in that way.

Judge EDMUNDS. Many messages are sent at night-rates; and with the understanding they shall be delivered the next morning.

Mr. MERRIMON. It looks to me as if you could not fix for regular hourly delivery. A man telegraphs me from New York, "Come on the 11.30 train." Perhaps that telegram reaches Washington at 11.20, but I do not get it till one minute after the train starts. It has failed of its purpose.

Judge EDMUNDS. We would require a slight additional force. We would need a man or two, who would be drawn from the evening force, for emergency business. You will have to have some for the evening delivery. With the present number of carriers you could not deliver all the evening messages. You would require a slight additional force in an office as large as this. The force used for evening delivery could be divided into sections, each section doing duty a portion of the day on emergency messages, thus making, with the evening service, a full day's work.

Mr. MERRIMON. There would have to be some little increase of force to carry on the business of delivering telegrams?

Judge EDMUNDS. Yes, sir; because there are extra hours beyond what we can work our carrier force.

Mr. MERRIMON. In a city like this you have but one post-office?

Judge EDMUNDS. Yes, sir.

Mr. MERRIMON. I suppose there are a half dozen telegraph-offices?

Judge EDMUNDS. Yes, sir.

Mr. MERRIMON. Would you not have to have carriers at each of those offices? Otherwise, the telegraph-office would have to send the message to the post-office to be delivered.

Judge EDMUNDS. They generally send them to or from the central office now.

Mr. SAULSBURY. Is there no provision to have offices except at post-offices?

Mr. HUBBARD. Yes, sir. Everywhere that business demands them. The letter-carriers can deliver all the night-telegrams and a portion of the other. The bill provides a special delivery for all, and the five cents postage is large enough to pay the expenses of a special delivery in every case.

Judge EDMUNDS. I think it is more than sufficient. I think it would be a source of revenue.

Mr. SAULSBURY. Say you have in Washington eight or ten postal stations. At present the post-office business is confined to the post-office. There the letters are received, and from that point delivered. In the postal service you would have five, six, or ten stations in a city like Washington. It would be necessary to have connected with each of those stations carriers. Does it not, therefore, increase the number of employes?

Judge EDMUNDS. Suppose you have six or ten postal-telegraph stations in this town. Every one of those stations is in a carrier's route, and every time he passes he calls and takes what messages there are. So the extra messenger-service at such office would be very light. They know when the carrier is coming, and it would not be always necessary to send out a special messenger. He goes on his route regularly. Every one of those offices is in some carrier's route, and he can call there and take what there is just as well as from the central office.

Mr. SAULSBURY. You send out five times a day. You are engaged

from 5 to 8 o'clock. Therefore your carriers are engaged some two hours in delivery.

Judge EDMUNDS. We close our street-delivery at the office at 4.30. We make an evening delivery at the office at 7 o'clock.

Mr. SAULSBURY. Suppose you commence at 7 o'clock in the morning. There are sometimes two hours between the time the carriers leave and return. Now, do you not see that it would be exceedingly important in a case like that cited by Judge Merrimon?

Judge EDMUNDS. I think there you would have to provide some additional force for the noon delivery, and perhaps there would be needed some additional force to deliver in the intermediate time, which, as before stated, should be drawn from the evening force by sections.

Mr. SAULSBURY. You would have to have a special force at each station. Mr. Merrimon wants a witness in a certain case, and he notifies him. He answers, "Must I start on the next train?" Mr. Merrimon answers, "That must be attended to immediately. It will not do to delay."

Mr. RAMSEY. Gentlemen, Mr. Burt, postmaster of Boston, is present; he knows all about the post-office business. Mr. Hubbard has requested him to give us his opinion on this bill, and I have no doubt what he says will both interest and instruct us.

Mr. BURT. I shall not make that introduction good, but I will tell you what I have observed in office, and certainly observation is the best teacher.

Seven years ago I became connected with the Boston post-office and have had the management of it ever since. During that time I have succeeded in carrying out some reforms in the business. The office that formerly covered merely the locality of Boston now performs the duty of seventeen post-offices that have been consolidated with it. During the last six months we took in eleven more, seven of which were presidential appointments, thus doing away with \$25,000 annual salaries. For the circuit around Boston we have an hourly mail from early morning until evening. In connection with that the clerks of my office run out some hundred miles on the postal cars, and make up the mails in the cars. The incoming mails are sorted on the cars for my carriers. The office is never closed, and there is no difficulty in the delivery of the letters by the carriers during the day and evening. The first train leaves at 5 o'clock in the morning and the last one arrives at half-past 11 at night, and the last mails are put up and sorted with the same regularity as those arriving during the day. The business has grown enormously—from 47,000 letters daily a few years ago, to 140,000. The revenues of the office have increased fivefold. The net revenues of the postal service from Massachusetts are constantly increasing. This year we pay nearly a million dollars net revenue; 1½ cents letter postage would a little more than pay all our expenses.

There is a question whether we could deliver telegraph-messages in the city. I have one hundred and thirty-three carriers. The local business supports the entire free-delivery system. I am satisfied that the Department at once and with very little increase of force and expense can manage this whole telegraph question. The first item of expense is the office or rent; the United States is now starting out into an era of expenditures that requires us to consider this question. The Boston post-office will cost several millions of dollars. In that office we can perform the telegraphic business of Boston.

The same is true of New York, and the \$2,000,000 that the Western

Union Company are putting into the telegraph-building at the corner of Dey street could just as well be saved.

Mr. Orton remarked to me that "it was a great pity that two businesses one of which used the attic and the other the ground-floor of costly buildings should not be able to use the same building." Now we are building post-offices in all the chief cities; Boston, Saint Louis, Chicago, Philadelphia, New York. The telegraph companies must also erect large and costly buildings in the principal cities. This building in New York is but a beginning. The combination of the two means the saving of millions of dollars.

So much for the offices. As to the clerks, every message sent during the night, for merchants and business men in Boston, can be received with no additional expense, and I can deliver with my delivery in the morning one hour earlier than the telegraph-offices now open, without a dollar of increased expense. After our early morning mail is delivered, I can take the same carriers through the day, and can deliver telegrams as rapidly as the boys deliver them now.

I heard the remark, as I came in, "You are little aware of how long a time is consumed in the delivery of messages now."

Besides this means of delivery in Boston, there are 5,000 boxes. The mails, placed in them, every man will receive long before any message is delivered from a telegraph-office. Messages average about 30 minutes from the time of their receipt to their delivery. My carriers deliver letters in all the central portions of the city very much quicker. Every message, no matter what distance it goes, is copied and put upon a letter-press book before it goes out. The process is not a long one, but it is so long that when a boy takes out several messages you will find that the average delay is about one-half hour; this is true to a greater extent between distant cities. One great advantage that the new and rival telegraph-lines have over the old, is that the business man knows that, if business is pressing, a message will be transmitted and delivered more quickly on the new line less pressed with business.

Again, we have our office warmed and lighted. The work is constant. The office is in the central part of the city. The local stations all have telegraph-offices. Social messages, business messages, or pressing messages, during the business hours of the day, all may be delivered as they are now. The building will cost us nothing more. Light and fuel nothing more. Very few telegraph-offices are run all night. All the larger post-offices should be—mine never closes. The clerks are never absent from the office except during the hours of service on Sunday, from half past 11 to 4; that is the only time the office stops work. No man is excused from work; they know nothing whatever of hours; they have no choice, and when they make application for a clerkship in the post-office, they take their hours as I allot them. We have been able to administer the office seven years in precisely that state, until we have now a discipline that you would regard as admirable in any public or private office. No private citizen exacts what I exact. All it requires is a firm hand, a reasonably intelligent purpose, and a constant anxiety and watchfulness that everything should be for the best interests of the public. I demand of all my employes that they shall recognize that they are the servants of the public, and are there to submit to anything, except personal insult, without reply. Now, the telegraph, following the same thing, can be put into any office. In New York, Philadelphia, and Boston we can have these wires, working the entire night, transmitting messages at a minimum cost, where the wires would otherwise be idle, and delivered in the morning without expense.

The trouble to-day is that the telegraph is working down from a very expensive system. Its officers have never regarded it as meant for this cheap and constant use, but as intended for the use of business men on matters of importance, and where the amount of the charge was of less importance than prompt transmission. Let us take it and put it in the post-office, and we shall have the use increased and constantly increasing. It will increase as much by the increased facilities the post-office will furnish as by the reduced rates.

From letter-boxes in the streets of Boston six years ago, I collected between six and seven hundred thousand letters in a year. Last month I collected one million two hundred thousand in the month. Boston has not grown in proportion to that increase; it is only about three hundred thousand proper. Philadelphia has nine hundred thousand people in the same limit of delivery; but my postal business and its revenues are double that of Philadelphia. It is due to the condition of the people, to the facilities and the constant accommodation that is furnished.

I increased the number of mails. Where they had one I gave them two, and where they had two I gave them three. Points that were one hundred and twenty-five miles distant I connected by mails, so that a letter could be sent from the one place in business hours and received and delivered at the other place during business hours of the same day. From Boston to Albany I have a morning mail, which delivers letters mailed in Boston in the morning at half past one the same afternoon. You can have the telegraph-service put into the post-office with a very little increase of expense, and a large increase of revenue.

Mr. SAULSBURY. In those large cities you have a large carrier-force; but suppose you go through the country, taking the numerous little towns where there is but very little postal business, and only a limited amount of telegraph business. How would it operate there?

Mr. BURT. It would operate in this way: There are now two offices, telegraphic and post, in each of those places, and something supports them both. Nobody does business gratuitously. If those offices are combined, the business must be done at a saving of expense. The man in charge of the post-office should be able to operate a telegraph-instrument. If not, a lady, a young girl, or a boy will be able to attend the instrument, and, at a small expense, will suffice for both, and give a better service. Instead of losing, even in the smallest town, you will gain by having a combination of two kinds of service which are similar. Each will help the other.

The post-office is a place where everybody goes. There are more revenue-stamps sold through the post-office than through any other agency. We are required to do almost everything. If a man gets a lot of fractional currency which is soiled, and which he wishes to exchange, does he go to the express-office to forward his package to Washington? No. I must receive it, and send it here. The post-office goes further. Take a bank in Boston that wants to close up its circulation, it goes to the post-office with its bills. The night of the fire I had \$75,000 in gold-bills, which I carried through. The post-office comes closer home to the people than any other institution. The people are exacting, and that causes the public servants to look out and see that they serve the public wants. They are not elected, but are appointed; but for all that they hold their places on the tenor of the good esteem of the public. There never was a time, and I say this greatly to the credit of Mr. Creswell, in the Post-Office Department, when there was so little assumption of authority—so little setting themselves above the people by postmasters and employés—so earnest an intention to make the service popular, as to-day. This telegraph business can be done in the same way.

I know what the objections are. You say it will be used politically; messages will be sent or retained. A few years ago the wires ran from Halifax to Boston, and thence to New York. On the arrival of a steamer at Halifax the news was not allowed to be stopped in Boston, but went through to New York, then back to Boston. What was the result? They had wires attached to the line in different places, and if speculation was active in any article the wires were cut. The line could not be used unless speculators permitted it. Now, there are many wires strung on those poles, and you can send from Halifax to New York by different routes. During the great fire we had no difficulty in sending a message in any direction, although every wire in the city was burned. The system for the benefit and use of all will be cared for and protected by all. In England the poles are 15 feet high; here they are 30 feet. In time the wires will be strung on lower poles, and no one will think of injuring them.

This use of the telegraph in the post-offices is just like the handling of postal cards. None of my clerks have time or inclination to read them. They have not the least curiosity regarding them; neither do the operators in the telegraph-office care for a person's message. It becomes second nature to them. It will be so in the post-office. You cannot get a man who does the routine work of the office—unless in a very small office—who would have the time or desire to interfere.

You can have the two offices in one, with a reduction of expense, and no more control in the hands of the Government than there is to-day. This is the people's Government; we come and go, under the Constitution, as they desire. Take telegraph-operators, postmasters, anybody else—they are all in the hands of the people.

Should the Government have control of the telegraph? She has control of the mails absolutely. We do not allow any man except regular employes to deliver or collect letters in Boston. Every street in every large city is made a post-route. The Government is thus enabled to put in practice a better system. Is it not just as true of the telegraph?

Mr. SAULSBURY. I would like to ask you as to whether the expense would not be materially increased. Would not the connection of the telegraph-service with the Post-Office be a burden to the Department?

Mr. BURT. All the small post-offices are now a burden. It will not be a hardship to add this, but will improve the service of both. The post-office officials will quickly learn to work the telegraph-instrument. We cannot now charge those offices for their own expenses. They must be maintained for the benefit of the community; and now let us have, in connection therewith, the telegraph. The Post-Office is a great system, ready to add this new use. It reaches more offices than we can reach in any other way. It covers the wants of more people under an organization that is already perfected. The Government now reaches every office by the sale of its own postage-stamps. It reaches every postmaster through bonds he gives to do his duty faithfully. It covers this whole territory with a machinery that rests as lightly upon the people as possible. The control through thirty-three thousand postmasters works with less friction and with less trouble to the best interests of the country than it is possible, with such an active people, to conceive.

The telegraph has been gaining. The opportunities of the institution are great and will increase constantly. It is very natural that men having a pecuniary interest in it should desire to retain it. I think Mr. Orton, in various hearings, was kind enough to concede the various statements I am making. I think this would be a success, with proper

control. I think Mr. Orton never gainsaid that. In all the hearings he has never questioned it. I take him at his word. In my first hearing I said to Mr. Orton, "Let me have one thing from you; let me have every postal station a telegraph-station; give me the instruments in my own office. Let me have the use of it, as representing the commercial community of Boston. Let me have it and see whether it will work." Now, I do not open a postal station without having a telegraph-wire and instrument in there. I think the people admit it is a success.

Can the Post-Office afford to buy or construct telegraph lines? We could between principal points; but we cannot cover the whole territory. We cannot use the telegraph in part and the Post-Office in part for the same message. We must have some system devised whereby, considering our present pecuniary condition, we can cover the whole interests of the country. The man who telegraphs must send directly where the person lives. The Government cannot furnish any less accommodation than is furnished by private parties.

The question arises, shall we supply ourselves by purchase of lines? I said at the first hearing, "The man who proposes to build a railroad from here to New York specially to carry the mails is wild." The United States get the mail-service in connection with other service. We cannot afford to run a railroad; but we can afford to send a mail on every train. We get our service through the other service. If we owned the railroads to-day and had to carry the mails the deficit would be millions upon millions. In other words, we have got to secure our service through existing agencies. It is just as true in the telegraph. We cannot undertake to do this work ourselves. I am satisfied of that. The resistance of capital will delay the work too long. There is a great interest in completing it early. There is no interest to-day pressing on this country so much for the benefit of the public as the postal telegraph. It is pressing on the Government in these public buildings. Do you suppose the Western Union can put up a building in New York at an expense of two millions, and stop there? They will have to erect buildings in Chicago, Boston, and all the chief cities. They cannot resist it. Their stockholders and interests will demand it. Then what will you have? You have got a permanent tax on all telegraph messages, and you cannot help yourselves.

Competition does not cure anything in telegraphing, it does not help anything much.

There is an existing telegraphic system. We have got to work it into the Post-Office, serve the country, and serve the institution in connection with a Government institution. I should regret very much seeing the Government undertake to build lines of railroad or telegraph to reach all the post-offices. All these things will work themselves out. The demand is increasing almost beyond supply, especially in the Post-Office. I got an appropriation for our post-office, and I thought we had a post-office large enough for everybody. Then there were fifty or sixty clerks. To-day I have two hundred and fifty clerks, and I can hardly find room for them to stand. I have not room enough to do the work.

We have had reductions in foreign postage from 24 to 12 cents, from 12 to 6, with the marvelous fact that with every reduction in price the increased amount of mail-matter has kept the revenue up, and to-day we have got a 2-cent ocean-postage, with 2 cents inland postage for both England and America. That is a 6-cent through postage. That means an indefinite growth of the mails; an immense increase from day to day.

Now, these two departments can be put together and work harmoniously. One will strengthen the other. Each is an adjunct of the other. The Post-Office must have the telegraph. I have got to that point by practical experiment.

Mr. HUBBARD. Have you as many post-offices as there are telegraph offices?

Mr. BURT. We have a telegraph-station in every post-office, and all the telegraphic stations are connected with the post-offices.

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1874.—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

REPORT:

[To accompany bill H. R. 753.]

The Committee on Post-Offices and Post-Roads, to whom was referred House bill No. 750, report as follows:

On the night of March 22, 1872, the post-office at Burlington, Coffey County, Kansas, was broken open and robbed of postage-stamps and money belonging to the United States, to the amount of four hundred and ten dollars; also of two registered letters, one of which contained ten dollars, as appears from the affidavits of Peter S. Patton, postmaster, and William B. Patton, deputy postmaster, at said post-office.

William B. Patton also testifies that on the night of said robbery he was in charge of said office; that, after he had distributed the mail which came in at 10½ o'clock, he secured the locks of the desk in which the stamps and money were kept, and the doors of the office, and went home; that, in the night, the rear door was forced open by prying the hinges from the door; that the desk was broken open with an axe, and the stamps and money stolen. He also testifies that the office was kept in a substantial wooden building, the doors of which were secured by double bolts; that application had been made to the Post-Office Department for a safe for the use of the office, which was refused; that, owing to the mail coming in so late, the bank could not be used as a place of deposit for the office; that every precaution within the power of the postmaster or his deputy was taken to make the desks and office secure.

Allen Crocker, John M. Rankin, M. V. B. Sheafor, William B. Parsons, George N. McConnell, and Mart B. Hoover, testify on oath that they are business men and professional men of Burlington, Kans.; that they are acquainted with said Peter S. Patton and William B. Patton; that they were present in said town on the night of said robbery and are acquainted with the circumstances connected therewith; that the said office was kept in a frame-building as good and secure as the average of buildings in said town; that responsible men were sleeping in buildings contiguous thereto; that the assistant postmaster had been in the habit of sleeping in said office, but was absent on the night of the robbery on account of sickness; that the said postmaster and his assistant have always been watchful and diligent in the management of said office and care of public property. The town is a quiet and moral one and had never been infested with thieves, and that there was no reason to apprehend any, and that no ordinary thief could have perpetrated said robbery under all the surrounding circumstances.

It further appears that the said postmaster telegraphed immediately to Special Agent J. H. Crowell, and made strenuous efforts to detect the

thieves. He employed a detective at his own expense, and in about three weeks two men were arrested, one of whom was convicted of the robbery and sentenced to the penitentiary for three years; the other, for want of sufficient evidence, was discharged. The expense incurred by the said Peter S. Patton in detecting the thieves was \$100.

Mr. Patton, in his letter dated July 8, 1872, addressed to Hon. J. J. Martin, Auditor Post-Office Department, states that he supposed that the special agent had notified the Department and so let the matter run; that there was no intentional delinquency on his part.

The Third Assistant Postmaster-General, in a letter dated March 23, 1874, states that the probable amount of stamps on hand in said post-office on March 22, 1872, was \$491.86.

The loss as stated by Peter S. Patton in his affidavit is as follows:

12,000 three-cent stamps, stolen	\$360 00
\$50 post-office money, stolen	50 00
\$50 paid detective	50 00
\$50 other expenses incurred in capturing the thieves	50 00
\$10 stolen from a registered letter, which was paid by said post-master	10 00
Total	520 00

Your committee recommend that the sum of four hundred and twenty dollars be allowed to re-imburse said Postmaster Patton, and that the bill be amended accordingly.

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IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1874.—Ordered to be printed.

Mr. FLANAGAN submitted the following

R E P O R T :

[To accompany bill S. 434.]

The Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. 434) referring to the Court of Claims for adjudication and determination the claims of the parties therein named for the past and future use of Norton's postmarking and postage-canceling hand-stamp and the Robertson improved hand-stamp, report :

That they have duly considered the same, and heard the claimants in person, and by an argument in writing, in explanation of such machines and the inventions, of their utility, of their use by the Government, and saving in clerk-hire and in the annual expenditures of the Post-Office Department. As that argument contains the facts in the case, it is herewith submitted, having ascertained that the statements therein contained are correct, not only from the mass of evidence submitted for the consideration of the committee, but the written argument itself having been to the Postmaster-General for his examination and opinion thereon, who informed the committee that the facts therein contained are substantially correct and true.

Your committee have carefully examined the whole subject; have determined, from the mass of testimony submitted with the patents, as to the value of the same to the Government, and as to the use of said inventions by the said Government, that the better way to dispose of the matter is to refer the same to the United States Court of Claims, with full jurisdiction, for investigation and determination of the entire case as between the Government and claimants for the past and future use of the inventions and letters-patent thereon, as claimed by them and admitted by the Post-Office Department.

Your committee have carefully examined Senate bill No. 434, referred to them. Therefore, to carry out the conclusions and determinations hereinbefore set forth, we recommend the passage of said Senate bill 434.

ARGUMENT OF CLAIMANTS.

Mr. CHAIRMAN, AND GENTLEMEN OF THE COMMITTEE: In appearing before you to present the claims of Jacob Shavor, Albert C. Corse, and others, which are now before you for your consideration, I shall endeavor to briefly state the main facts and law upon which these claims

are founded. Every fact I shall state is amply verified and sustained by the proofs in the case, and much of my argument will be quotations from the official records of the Post-Office Department.

Letters-patent of the United States were granted and issued upon the petition of Marcus P. Norton for and upon certain inventions and improvements for the postmarking of letters and other mail-matter, and for the cancellation of the postage-stamps thereon. Said letters-patent were numbered and dated as follows, namely: No. 25036, August 9, 1859; No. 37175, December 16, 1862; No. 38175, April 14, 1863, and which letters-patent were re-issued to Jacob Shavor and Albert C. Corse, August 23, 1864, and are No. 1748 of re-issued patents, and were assigned to parties hereto, as set forth in the transcripts of assignments now before you. These patents fully describe the invention and improvements covered and claimed by each.

The device, *as a whole*, consists of two separate and distinct instruments, combined by suitable mechanical means into one device or machine, so that the postmarking is done upon the envelope of the letter at the same time and operation of the cancellation of *the exposed* surface of the postage-stamp by the canceling device or instrument coming into contact therewith, in the manner fully specified in the letters-patents now before you in evidence, whereby a more successful and permanent cancellation of the postage-stamp is secured, thereby preventing frauds from *a second* or *re-use* of washed or chemically cleaned postage-stamps. The canceling instrument consists of the use of *steel, cork, rubber, or other elastic* material, secured in proper position and especially constructed and arranged for successful operation, and is operated in conjunction with the postmarking instrument or device by mechanical means constructed for *that* purpose. Upon the lower surface of such canceling instrument is constructed any form or configuration desirable for the purpose of holding a quantity of *ink* sufficient to impregnate and to destroy the postage-stamp, thereby rendering the cancellation of the same permanent. The canceler, upon coming in contact with *the enamel-like* or *hard, indelible-ink surface* of the *postage-stamp*, by the blow or force of the instrument so constructed and combined, will to a certain degree *mar* or *break* such exposed *ink surface* of the postage-stamp, and permit or allow *the same* instrument to inject *into* the postage-stamp and impregnate it *with* the ink of such kind as may be used, and a full and perfect cancellation of the same will *at once* appear, without injury to the letters or packages, or to the contents of the same.

This machine or device so patented has been in successful and continuously exclusive use in the postal service of the United States, by the order and directions of the Postmaster-General, since the month of April, 1863, it having been previously tested by an *experimental use* in the most thorough manner in the New York City post-office for more than one year and a half, and it was approved and recommended in writing, by a letter under date of January 3, 1863, (after such test or trial use,) to the Postmaster-General by the postmaster at *that* post-office, to whom it had been referred by the Postmaster-General for experimental use, and for his opinion thereon as to the success of the invention and of its value and importance to the postal service. Such use was without any compensation to the inventor or any other person, nor upon any other stipulation than my consent that the invention and improvements might be so used until its utility and advantages to the postal service and Government should be effectually tested and proven, when a *fair, just, and equitable* compensation for either *its use* or for the

purchase of the *letters-patent*, should be made by the Government of the United States.

The letter to which I have referred is in the following words, to wit:

POST-OFFICE, *New York*, January 3, 1863.

SIR: Some time since you requested that I should test the utility of Norton's double postmarking and canceling stamping-iron, and report my opinion thereon. It was in use in this office when I first entered upon my duties. Since then the canceling part has been changed in various forms. We have tried the cutter thoroughly. This is the most complete method of cancellation, but it is liable, even if used with the greatest care, to injure the contents of the envelope, especially if the inclosures are cards, photographs, and the like. We have also used cork, by inserting it in the cylinder of the canceler. This has proved successful, and our cancellation is now performed in this way. I am confident no office in the country performs cancellation more thoroughly. The design of Mr. Norton is indispensable to us. Indeed, unless I should nearly double the stamping force, we could not dispense with its use. I am satisfied the interest of the Department would be subserved by securing its general use. We are now testing a stamp and canceler on Norton's plan, made of box-wood. It promises well, and can be made at a very trifling expense. I am fearful, however, its liability to yield to the wear to which it will be subject may prevent its general adoption. Time will determine this.

Very respectfully, your obedient servant,

ABRAM WAKEMAN, *Postmaster,*
Per Secretary.

A. N. ZEVELY, Esq.,
Third Assistant Postmaster-General.

This device having been sufficiently proven and admitted to be a labor-saving machine, not only by the postmaster at the New York post-office but also by many postmasters throughout the country, and its utility in each and every respect having been satisfactorily tested and maintained by uninterrupted use in the larger post-offices in the United States, and its general adoption having taken place on the 1st day of April, 1863, and a contract concluded for the manufacture and supply of the same to the Post-Office Department for a term of four years, further contracts were entered into for such supply, by said Department, for four years from and after the 1st of April, 1867 and 1871, without any license or permit from the assignees and owners of the aforesaid letters-patent, or either of them. The said original assignees appear before the present Congress, claiming and asking that suitable compensation be awarded them for the said invention, device, and letters-patent, on condition of an assignment and transfer of the said *letters-patent* to the United States, and an acquittance and release for the past use of said invention and device.

The value and importance of this machine and invention to the postal service in the post-offices and upon the postal railway-cars throughout the country is, beyond any question, an established fact. It is admitted by the Post-Office Department to be an indispensable device or machine for the rapid postmarking of letters, and for the cancellation of postage-stamps thereon, and there are many proofs submitted to you, gentlemen, by which it is most conclusively shown that by its use the Government has actually saved, and is now saving, from *one-third* to *one-half* the postmarking and postage-stamp canceling force or clerk-hire heretofore required and employed in that business; and that it greatly facilitates the dispatch of letters for transportation in the mails; that it greatly economizes in the time of the preparation of the mails for transportation; that it cancels in the most perfect and permanent manner the postage-stamps upon letters, packets, or other mail-matter, and at the same time and operation of the machine gives upon the envelope or wrapper, at or near the postage-stamp, a plain and intelligent *postmark* and the *date* of the mailing and of the cancellation of the postage-stamp;

are founded. Every fact I shall state is amply verified and sustained by the proofs in the case, and much of my argument will be quotations from the official records of the Post-Office Department.

Letters-patent of the United States were granted and issued upon the petition of Marcus P. Norton for and upon certain inventions and improvements for the postmarking of letters and other mail-matter, and for the cancellation of the postage-stamps thereon. Said letters-patent were numbered and dated as follows, namely: No. 25036, August 9, 1859; No. 37175, December 16, 1862; No. 38175, April 14, 1863, and which letters-patent were re-issued to Jacob Shavor and Albert C. Corse, August 23, 1864, and are No. 1748 of re-issued patents, and were assigned to parties hereto, as set forth in the transcripts of assignments now before you. These patents fully describe the invention and improvements covered and claimed by each.

The device, *as a whole*, consists of two separate and distinct instruments, combined by suitable mechanical means into one device or machine, so that the postmarking is done upon the envelope of the letter at the same time and operation of the cancellation of *the exposed* surface of the postage-stamp by the canceling device or instrument coming into contact therewith, in the manner fully specified in the letters-patents now before you in evidence, whereby a more successful and permanent cancellation of the postage-stamp is secured, thereby preventing frauds from *a second* or *re-use* of washed or chemically cleaned postage-stamps. The canceling instrument consists of the use of *steel, cork, rubber, or other elastic* material, secured in proper position and especially constructed and arranged for successful operation, and is operated in conjunction with the postmarking instrument or device by mechanical means constructed for *that* purpose. Upon the lower surface of such canceling instrument is constructed any form or configuration desirable for the purpose of holding a quantity of *ink* sufficient to impregnate and to destroy the postage-stamp, thereby rendering the cancellation of the same permanent. The canceler, upon coming in contact with *the enamel-like* or *hard, indelible-ink surface* of the *postage-stamp*, by the blow or force of the instrument so constructed and combined, will to a certain degree *mar* or *break* such exposed *ink surface* of the postage-stamp, and permit or allow *the same* instrument to inject *into* the postage-stamp and impregnate it *with* the ink of such kind as may be used, and a full and perfect cancellation of the same will *at once* appear, without injury to the letters or packages, or to the contents of the same.

This machine or device so patented has been in successful and continuously exclusive use in the postal service of the United States, by the order and directions of the Postmaster-General, since the month of April, 1863, it having been previously tested by an *experimental use* in the most thorough manner in the New York City post-office for more than one year and a half, and it was approved and recommended in writing, by a letter under date of January 3, 1863, (after such test or trial use,) to the Postmaster-General by the postmaster at *that* post-office, to whom it had been referred by the Postmaster-General for experimental use, and for his opinion thereon as to the success of the invention and of its value and importance to the postal service. Such use was without any compensation to the inventor or any other person, nor upon any other stipulation than my consent that the invention and improvements might be so used until its utility and advantages to the postal service and Government should be effectually tested and proven, when a *fair, just, and equitable* compensation for either *its use* or for the

purchase of the *letters-patent*, should be made by the Government of the United States.

The letter to which I have referred is in the following words, to wit:

POST-OFFICE, *New York, January 3, 1863.*

SIR: Some time since you requested that I should test the utility of Norton's double postmarking and canceling stamping-iron, and report my opinion thereon. It was in use in this office when I first entered upon my duties. Since then the canceling part has been changed in various forms. We have tried the cutter thoroughly. This is the most complete method of cancellation, but it is liable, even if used with the greatest care, to injure the contents of the envelope, especially if the inclosures are cards, photographs, and the like. We have also used cork, by inserting it in the cylinder of the canceler. This has proved successful, and our cancellation is now performed in this way. I am confident no office in the country performs cancellation more thoroughly. The design of Mr. Norton is indispensable to us. Indeed, unless I should nearly double the stamping force, we could not dispense with its use. I am satisfied the interest of the Department would be subserved by securing its general use. We are now testing a stamp and canceler on Norton's plan, made of box-wood. It promises well, and can be made at a very trifling expense. I am fearful, however, its liability to yield to the wear to which it will be subject may prevent its general adoption. Time will determine this.

Very respectfully, your obedient servant,

ABRAM WAKEMAN, *Postmaster,*
Per Secretary.

A. N. ZEVELY, Esq.,
Third Assistant Postmaster-General.

This device having been sufficiently proven and admitted to be a labor-saving machine, not only by the postmaster at the New York post-office but also by many postmasters throughout the country, and its utility in each and every respect having been satisfactorily tested and maintained by uninterrupted use in the larger post-offices in the United States, and its general adoption having taken place on the 1st day of April, 1863, and a contract concluded for the manufacture and supply of the same to the Post-Office Department for a term of four years, further contracts were entered into for such supply, by said Department, for four years from and after the 1st of April, 1867 and 1871, without any license or permit from the assignees and owners of the aforesaid letters-patent, or either of them. The said original assignees appear before the present Congress, claiming and asking that suitable compensation be awarded them for the said invention, device, and letters-patent, on condition of an assignment and transfer of the said *letters-patent* to the United States, and an acquittance and release for the past use of said invention and device.

The value and importance of this machine and invention to the postal service in the post-offices and upon the postal railway-cars throughout the country is, beyond any question, an established fact. It is admitted by the Post-Office Department to be an indispensable device or machine for the rapid postmarking of letters, and for the cancellation of postage-stamps thereon, and there are many proofs submitted to you, gentlemen, by which it is most conclusively shown that by its use the Government has actually saved, and is now saving, from *one-third* to *one-half* the postmarking and postage-stamp canceling force or clerk-hire heretofore required and employed in that business; and that it greatly facilitates the dispatch of letters for transportation in the mails; that it greatly economizes in the time of the preparation of the mails for transportation; that it cancels in the most perfect and permanent manner the postage-stamps upon letters, packets, or other mail-matter, and at the same time and operation of the machine gives upon the envelope or wrapper, at or near the postage-stamp, a plain and intelligent *postmark* and *the date* of the mailing and of the cancellation of the postage-stamp;

and that it also contributes largely to prevent frauds on the postal revenue by the *re-use* or *re-issue* of postage-stamps that have been once used, as the cancellation is so permanent that no successful washing or chemical cleansing can be had of postage-stamps once used in the payment of postage, thereby preventing any *re-use* of the same; and that letters do not require to be handled over the second time, as was the case under the old system, in order to *postmark*, to give *the date* thereof, and to *cancel* the postage-stamp. The proofs submitted to you, gentlemen, show several other advantages gained and benefit derived to the postal service by the use of this invention and machine, which it is unnecessary for me to mention *in detail* at this time, having given the main or leading features of value and importance in that service by the use of the said device under said letters-patent.

Its utility and economy in time, labor, and clerk-hire are so far established that the invention and device protected by the said *letters-patent* and the re-issues thereof has already been put into general and extensive use in all the larger post-offices and upon all the postal railway-cars throughout the country, and it is now being put into use in all the post-offices of the United States of any considerable size. The Post-Office Department is now supplying *post-offices* and *postal railway-cars* at the rate of about two thousand per annum, with a constant increase in the demand for the use of the same from all parts of the country. The Government, in consulting its interests, has fully determined, through the Post-Office Department, a necessity for the permanent and general use of the said invention, machine, or device; and nearly *ten years'* use of the same determines it to be an *indispensable* requisite to the safe, rapid, and economical operation of postmarking, stamping, dating, and canceling postage-stamps in the postal service of the United States. The highest and best authorities have borne testimony to the efficacy of the aforesaid postmarking, dating, and canceling hand-stamp; the amount which it has saved to the Government in the past is large, and the fact is unquestionable; and many of those whose testimonials have been given and put before you, gentlemen, have emphatically declared that the business of the Department cannot be carried on *without it*, unless it be done by a very large *increase* of clerical force, as well as *increased* expenditure in money, *increased* labor, and great delays in making up the mails for transportation. Hence the expediency and necessity for its use. Its continued employment seems to be demanded beyond any doubt.

Gentlemen, letters-patent were also granted and issued upon the petition of said Marcus P. Norton, No. 34184, dated January 14, 1862. Also, letters-patent were granted and issued upon the petition of T. J. W. Robertson, No. 18249, dated September 22, 1857. Each of these patents was for and upon improvements in hand-stamps or dating and printing machines. The invention consists of a series of cylinders, or type-wheels, for printing the dates, such as the year, month, day of the month, and a stationary form used in combination therewith. These patents were duly issued to claimants hereinbefore named, and are now owned by them. These devices are fully described in the said letters-patent, as well as their mechanical changes and separate and combined uses. These devices and improvements have also been extensively used by the Government in its several departments, Money-Order Bureau, Internal-Revenue Department, and in the postal service, and elsewhere, by the order of the Commissioner of the Internal-Revenue Bureau and by the heads of other Departments.

The Postmaster-General, in a letter to the Senate Committee on Post-

Offices and Post-Roads, under date of the 15th day of January, 1867, says :

The Department has already saved several thousand dollars by its use, and I have no doubt will continue to save large sums by its future use. The question of value to the Department has been long settled. The necessity to the Department of its continuing it in use is beyond question. It is also necessary that some settlement be immediately made with the owners of the patent for this canceling and postmarking and dating stamp. If no settlement is made by the Government, so that these stamps can be made and furnished to the Department without interference or embarrassment from the owners of the patent, it is apprehended the Department will be compelled to resort to a more expensive and less approved method of postmarking and canceling stamps, and thus incur great expense and suffer great loss.

The same Postmaster-General, in another letter to the same committee, bearing date the 13th day of March, 1867, calling the attention of the committee to the fact that the Department desired to enter into a four years' contract with the Government contractor to furnish, for use in the postal service, this invention and device under the letters-patent of April 14, 1863, and their re-issue of August 23, 1864, and granted to said Marcus P. Norton, says :

Information has been received at this Department that no arrangement or settlement was made by the last Congress for the payment for the past use and for the purchase of the invention made by Marcus P. Norton, of Troy, N. Y., for the *postmarking of letters and for the canceling of postage-stamps thereon*. This being the state of facts, the Department finds itself very much embarrassed. It desires, and must, as a matter of economy and facility in the making up of the mails for transportation, continue in use this invention.

If this Department cannot have the right to continue to use this invention, it will be compelled to increase the stamping force about one-half in all the large post-offices, in which event the postage-stamps would not be as perfectly canceled. It has been ascertained that if the Government owned Norton's patent at the time of making contracts to furnish to the Department postmarking and postage-canceling stamps, it would be able to save from \$1 to \$2 on each stamp, and, as there are several hundred required during each year, it is submitted that, for the four years of this new contract, a saving in the manufacture of these instruments alone would be several thousand dollars. Permit me to urge, for these reasons, that Congress make immediately some settlement for the continued use of this valuable and almost indispensable invention by this Department. In conclusion, I most earnestly hope that some arrangement will be made by Congress with the owners of the patent, in order to relieve the Department of much trouble and expense. I would not have called your attention to this matter at this time, but for the great necessity that the same should now be disposed of, so as to give relief to the Department.

Again, in another letter, dated the 24th day of April, 1868, the same Postmaster-General says :

I have always understood that when the Department was about to enter into a contract for marking-stamps, with Norton's canceling device combined therewith, he expressed an entire willingness that the same should be used by the Department without let or hinderance on his part, he relying upon the justice and liberality of the Government for such compensation as he was fairly and equitably entitled to for the use of his patent. It has always been conceded by my two immediate predecessors, as well as myself, that he should receive a just and fair compensation for his invention, which has proved a great saving of expense to the Department.

The present Postmaster-General, in a letter to the Senate committee, in answer to inquiries made by that committee of him concerning the matters set forth in a bill referred to your honorable committee by the Senate, and bearing date the 14th day of June, 1870, says :

In reply, I beg to state that a postmarking and canceling stamp, known as the "Norton stamp," has been in use by this Department for several years. No compensation has been paid to the inventor and patentee, or his assignees, for the past use of said stamp. The invention is valuable to the Department, and the inventor and patentee of it, in my judgment, deserves to be fairly and reasonably compensated by the Government for its past and future use in the postal service.

He also says, in substance :

It is regarded as almost indispensable to a safe, rapid, and economical management of certain postal matters. The claim should now be settled by the Government upon fair, just, and honorable terms, and I leave the whole matter for Congress to determine what course shall be taken for a settlement for the past as well as for the future use of the invention during the term of the letters-patent which I now have before you, bearing date the 14th day of April, 1863, numbered 38175.

In a letter from the Postmaster-General to the Senate of the United States, dated the 25th day of February, 1871, and in answer to the requirements of a joint resolution of Congress concerning the aforesaid letters-patent, approved the 14th day of July, 1870, and in reference to the invention and machine contained in the aforesaid letters-patent, he says :

The stamp patented in 1863 has been in use in the Department, and furnished by contractors under contracts, commencing the 1st day of April, 1863, and April 1, 1867, each for four years. No other stamp appears to have been used in the Department containing this combination for postmarking and canceling at one and the same blow, and containing the devices and mechanical arrangement and combinations specified and covered by that patent.

Long-continued use of this machine by the Department in the postal service must be satisfactory evidence of the value and importance of the same *in and to* that service.

It also appears from the proofs I have submitted to you, gentlemen, that there have been three different contracts made by the Postmaster-General, each for a term of *four* years, and for the furnishing for the use of the Department, in the postal service, of the invention and machine patented under *the dates and numbers* of letters-patent as hereinbefore stated, and at large set forth, with which contracts the claimants have nothing whatever to do, and was made with the lowest responsible bidder, as by law provided concerning that Department.

In the same letter, dated the 25th day of February, 1871, the Postmaster-General also says :

The combined stamp has been demonstrated by continuous use during nearly eight years to be valuable in the larger *post-offices* and in the *railway service*. Simple as it is, no other device has been hit upon that will do the work of this one, without adding largely to the number of stamping-clerks employed, and consequently increasing the expenses of the Department. It is impossible to estimate, with any degree of accuracy, the amount of money which has been, or which may be, saved by its use. Nothing has been paid to any one as royalty for the use of the invention. I indorse its usefulness in decided terms.

By a recent decision of the Supreme Court of the United States, letters-patent upon mechanical invention are held as, and by that court declared to be, property, the same as *real estate* or *personal* property, and that the inventor and his lawful representatives are justly entitled under the law to full protection as against any one using the invention under the letters-patent without having first obtained a right or license to use the same. In that decision the court use the following language, to wit :

Inventions secured by letters-patent are property in the holder of the patent, and as such are as much entitled to protection as any *other* property, consisting of a franchise, during the term for which the franchise or the exclusive right is granted. In fact, this doctrine has long been held by the Supreme Court of the United States.

In view of this decision, coming from the highest court in the land, it has occurred to me whether or not the inventor and his assignees might not, by proceedings in the equity court of the United States, be lawfully entitled to an injunction against any person or persons using this machine and invention, to prevent and to restrain further use of the same ; and

that, should we pursue that course, it would make very great trouble to, and might greatly inconvenience, the Post-Office Department, and also delay the transportation of the mails by preventing the making up of the same ready to go upon the cars, until *the old* postmarking and postage-canceling stamps could be refurnished from the Government manufacturers, and the clerical stamping force in the *post-offices* and upon the *postal railway-cars* could be *increased* to that number sufficient to do the work required by the change, *to wit*, double the force now required in post-offices and on postal cars. Were this course to be pursued, it is manifest that serious inconvenience and delay would follow, necessitating a large *increase* in the *annual* appropriations for the expenses of the Post-Office Department, and in many ways work injuries and delays in the postal service. All such results may now be prevented by the act of Congress in the making of some fair, just, and equitable provisions for the speedy settlement and adjudication of this claim.

Article five of the amendments of the Constitution of the United States, among other things, provides :

Nor shall private property be taken for public use without just compensation.

"PRIVATE PROPERTY" is the sacred right of individual dominion. It is one of the great absolute rights of every citizen of the Republic to have his property protected, and the Government has no right whatever to deprive the citizen of his property, except for the use of *the public*; not even then, without a *fair, just, and equitable* compensation or remuneration; and, continuing a little further on with this doctrine of the law, it is a well-settled principle that no man "shall be disseized of his freehold or of his *private* property without a *fair and just* compensation therefor, when taken for the use, gain, and profit of the public by the order, directions, or by the contract, *specific* or *implied*, on the part of the Government."

The learned Mr. Story says :

This is an affirmance of a great doctrine established by the *common law* for the protection of *private* property. It is founded on natural equity, and is laid down by jurists as a principle of universal law.

We need not say to you, gentlemen, that more than *ten years* have passed since these inventions first went into general use by the direction of the Government of the United States, by and through the permission and direction of the heads of Departments of such Government, and by such use have impliedly agreed to pay a fair and just compensation therefor. We therefore ask that Senate bill No. 434 of the Forty-third Congress, referring to the United States Court of Claims for adjudication and determination the claims therein (and herein) named, which bill is now before you for consideration, may be passed, so that we may have such claims settled by the courts.

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1874.—Ordered to be printed.

Mr. DAVIS submitted the following

R E P O R T :

The Committee on Claims, to whom were referred the claim and papers in the case of E. M. Dennison, of Washington, D. C., have considered the same, and submit the following report :

E. M. Dennison was crier of the supreme and criminal courts of the District of Columbia from April, 1863, to December, 1865, when he resigned and W. A. Mulloy was appointed. Dennison was paid \$2 per day, and attended to the two courts. He, with others, petitioned Congress for advance of pay, but no advance was allowed until after Dennison resigned. Two advances were made, amounting to forty per cent., and dated back, so that others got an advance and Dennison did not. At this time there are two criers of the courts, doing the same duty formerly done by Dennison, and they get \$3.50 each, making \$7 per day for the same duty performed by Dennison for \$2 per day.

The judges, clerk, and attorneys of the courts named join in recommending extra compensation to Dennison.

He served two years and eight months.

The committee think Mr. Dennison not legally entitled to additional compensation, and cannot recommend opening the door to this class of claims, and report unfavorably.

THE HISTORY OF THE CITY OF NEW YORK

FROM THE FIRST SETTLEMENT TO THE PRESENT

BY JOHN EDGAR SWANwick

VOLUME II

The first part of the history of the city of New York, from the first settlement to the present, is contained in the first volume of this work. The second part, which is the subject of this volume, is the history of the city from the first settlement to the present.

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IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1874.—Ordered to be printed.

Mr. GOLDTHWAITE submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of George W. Stuart, report:

The case of the claimant, upon his petition, is this: The Hon. R. H. Roussieuro having been appointed minister to Honduras, and not being, in his official capacity, entitled to a messenger under the laws of the United States, engaged the claimant to go with him in that position, at the rate of \$25 per month in gold. The petitioner further states that he remained with him three years and nine months, during which time he not only acted as messenger, but as bearer of dispatches to Comingo, and also saved his life on two or three occasions. That, during the entire period of his service, he has been paid but \$200, leaving a balance due him of \$920, for which amount he asks an appropriation by bill.

There is no charge that the debtor is insolvent—that the amount due cannot be collected by suit. The petition is, to substitute the Government in the place of the defaulting party in a contract purely personal, which it has neither interest in nor connection with.

The claim has no merit, and the committee ask leave to be discharged from the further consideration of the same.

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IN THE STATE OF NEW YORK

IN SENATE

REPORT

REPORT

The Committee on Education and the Board of Regents of the University of the State of New York, in response to a resolution of the Senate, passed on March 1, 1894, have the honor to submit herewith the following report:

The case of the defendant, upon the petition, is this: The Board of Regents of the University of the State of New York, in its official capacity, caused to be appointed and under the laws of the State, engaged the defendant to go with him in that position, at the rate of \$250 per month in cash. The defendant further states that he resided with him three years and nine months, during which time he not only acted as lecturer, but as teacher of mathematics to students, and also saved his life on two or three occasions. That during the period of his service, he has been paid but \$2200, leaving a balance due him of \$300, for which amount he asks an appropriation by bill. There is no charge that the debt is invalid—that the amount due cannot be collected by law. The petition is to compel the Board of Regents to pay to the defendant the balance due him, which is the subject of the defendant's bill. The defendant further states that he has neither interest in nor management of the property of the University of the State of New York, and that the defendant is not a member of the Board of Regents.

IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1874.—Ordered to be printed.

Mr. GOLDTHWAITE submitted the following

REPORT:

[To accompany bill S. 60.]

The Committee on Claims, to whom was referred a bill for the relief of P. O'Donnel, have had the same under consideration, and ask leave to submit the following report:

The evidence submitted in support of the claim referred to in the bill shows that in April, 1865, 26,000 feet of lumber belonging to the claimant, of the value of \$2,600, was taken under military order for and appropriated to the use of the quartermaster's service of the Army of the United States, of the department of South Carolina. There is no evidence tending to establish the loyalty of the claimant; but as, to the contrary, the evidence shows that he was before and at the time of taking a resident of South Carolina, then an insurrectionary State, the presumption of disloyalty attaches to him. The current of modern authorities has established the general rule that private property of pacific persons on land is exempted from seizure or confiscation. (Halleck, International Law, pp. 466, 467, secs. 11, 12, and cases there cited.) The rule, however, is not without its exceptions, among which are found contributions for the support of the invading army, and such other special cases as may be dictated by the necessary operations of war.

The only evidence which tends to establish the right of the claimant to compensation is to be found in a letter addressed by him to the officer in command, Maj. Gen. Daniel E. Sickles, in which he states that when informed of the order he called upon Brigadier-General Hatch, by whom it was approved, and was informed by him that the necessities of the Government required the lumber, but that he (claimant) should be paid for it. If it was clearly established that payment to the owner for the property was intended, it might warrant the inference that the seizure was a mere taking for public use, for which just compensation should be made, and thus exclude the conclusion that it was taken under the laws of war as a forced contribution.

The committee, however, are of the opinion that the mere statement of the claimant is not of itself sufficient to controvert the evidence showing clearly that the property was taken under circumstances which would not render the Government responsible, and thus entitle him to compensation. The amnesty proclamation of December 25, 1865, does not help him, as by the seizure of the property in 1865 his right of ownership was divested, and neither pardon nor amnesty could divest the title thus acquired by the Government, or confer upon the claimant the right to compensation for property of which he had been legally divested.

Entertaining these views, the committee ask to be discharged from the further consideration of the bill.

IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1874.—Ordered to be printed.

Mr. GOLDTHWAITE submitted the following

REPORT:

[To accompany bill S. 657.]

The Committee on Claims, to whom was referred the memorial of Anderson & White, have had the same under consideration, and submit the following report:

The claim was originally preferred by the firm of Anderson & White, for compensation for the loss of twenty-seven bales and six parts of bales of cotton, and damages to one hundred and eighty-seven bales and six parts of bales, being part of a lot of two hundred and twenty bales belonging to said firm, two hundred and eighteen bales of which were impressed by Brigadier-General Rousseau on the 5th of September, 1862, and two bales by Brigadier-General Negley on the 24th day of September, 1862.

Since the institution of the claim White has died, and it is now prosecuted by John J. Anderson as the surviving copartner. The facts relied upon to sustain the claim are—

1. The purchase of some three hundred bales of cotton by the firm of Anderson & White (of which the claimant is the surviving copartner) in April or May, 1862, under a permit granted by the Hon. S. P. Chase, then Secretary of the Treasury, by the direction of President Lincoln, allowing them to buy and trade in cotton, within the lines of the Union Army in the States of Tennessee and Alabama.

2. The impressment of two hundred and eighteen bales of the cotton thus purchased, by order of General Rousseau, and two bales by General Negley, for the defenses of the city of Nashville, and the appropriation of the cotton thus impressed to that use.

3. That the military exigencies impending sanctioned the impressment and appropriation.

4. Damages and loss caused by the impressment, and compensation therefor.

1. As to the purchase of the cotton; the claimant states, on oath, that the permit under which it was bought has been lost or mislaid; that he has caused search to be made for it, or a record of it, in the United States Treasury Department, but without success; that his best recollection is, that after he had quit the cotton business, and was appointed collector of internal revenue for the sixth district of Kentucky, he gave the permit back to Mr. Chase, but of this he is not certain; all he can say is, that the permit has been lost or mislaid, so that it cannot be found. The fact that the records of the Treasury Department contain no information in relation to the permit, also appears

from a communication from the Secretary of the Treasury to the committee under date of March 3, 1874.

As the permit cannot be produced, it can only be established by secondary evidence, which is resorted to; and upon this issue Green Adams states on oath, that in the spring of 1862, being at the time Auditor of the Treasury for the Post-Office Department, he went with the claimant, John J. Anderson, to see the President of the United States, Mr. Lincoln, to obtain a permit to purchase cotton in the States of Alabama and Tennessee; that the President gave to claimant a note to the Secretary of the Treasury, Mr. Chase, who, in his presence, gave to Anderson & White a permit to purchase cotton within the lines of the Army of the United States in Tennessee and Alabama.

William Hoffman, cashier of the Exchange Bank at Mount Sterling, Ky., deposes on oath that he knows that the claimant in the spring of 1862 had a written permit to buy cotton within the Federal lines as far as they extended into the territory of the South; that he saw said permit and read it. The fact of the permit is also established by the affidavit of William Spence, United States marshal for the district of Tennessee, who was well acquainted with Anderson & White, and was present with them at Huntsville, Ala., in the spring and summer of 1862; that they were boarding together at the same house, and purchasing cotton at the same time and under the same authority; that Anderson & White, as well as himself, had authority from Secretary Chase to buy and trade in cotton, and rather bragged that theirs was the better permit.

The testimony of Samuel McLelland is to the same effect. He was with Anderson & White at Huntsville when they were purchasing cotton; he was engaged in the same business, and bought cotton from them. They were boarding at the same house, on intimate terms with each other, and had frequent conversation together about the purchase of cotton. Was present when the cotton which was taken from Anderson & White, and used for fortifications at Nashville, Tenn., was bought by them in or near Huntsville, Ala., within the lines and in that part of the State which was in the possession and control of the forces of United States. This evidence, coming as it does from witnesses of standing and position, leaves no doubt in the mind of the committee that, in the spring of 1862, a permit was granted by the Secretary of the Treasury, by the direction and with the indorsement of the President, giving authority to Anderson & White to purchase and trade in cotton in such parts of the States of Tennessee and Alabama as were within the lines of the Union Army; and that, under the permit thus granted, the two hundred and twenty bales of cotton was purchased in or near Huntsville, in that part of the State of Alabama which was within the Federal lines and controlled by the Federal forces. That such was substantially its terms is established by more than one witness, and is sustained by the action of the parties under it. The lot of cotton from which the impressment was made was, as has been stated, bought in or about Huntsville, Ala., but the evidence, while conclusive as to the purchase, is not equally so as to the political status of the persons from whom it was bought. Under these circumstances, the question is presented as to the effect of the permit. Does it authorize the intercourse which it allows, to be conducted by or with disloyal persons?

There is no doubt as to the loyalty of Anderson & White. It is established by the most satisfactory evidence. The testimony of R. J. Meigs, clerk of the supreme court of the District of Columbia, William

C. Spence, United States marshal for Middle Tennessee, C. D. Pennebaker and George W. Gist, who have known them long and well, bears witness to it.

There is, however, no evidence before the committee tending to show the loyalty of the persons from whom the cotton was bought, and the fact that the purchase was made in or about Huntsville, if it has any weight at all, is not in favor of the loyalty of the party from whom it was purchased. But in the absence of any restriction imposed by the terms of the permit, does it operate to restrict the intercourse which it allows to be conducted with loyal citizens only? Turning to the non-intercourse act of 13th July, 1861, and it will be found, that it refers the matters under discussion entirely to the discretion of the President. The authority is, to grant the permit to carry on the intercourse "in such articles, for such time, and by such persons as he in his discretion may think most conducive to the public good," "and under such rules and regulations as may be prescribed by the Secretary of the Treasury." These rules and regulations were promulgated on the 4th March, 1862, and in terms apply only to the conduct of internal intercourse between the inhabitants of States and parts of the United States, heretofore declared by the President to be in insurrection, and the citizens of the loyal States of the Union. The intercourse which it allows is with the inhabitants of the rebel States, without any restriction whatever as to their loyalty. Such restriction, had it been imposed, might not, in the language of the act, have been "the most conducive to the public good." The purpose of the permit-system, either under the non-intercourse act or outside of it, was the same. The nation was involved in war, a domestic war, greater in all its elements than any one recorded in the annals of history. By permits supplies could be obtained, which might materially aid the Government in bringing the issue to a speedy as well as a successful termination; and any rule or regulation which, while allowing commercial intercourse with the inhabitants of the insurrectionary States, restricted it alone to those who were loyal, could not advance, and might materially prejudice, the results intended to be accomplished. The permit, however, under which the cotton operations of Anderson & White were conducted, was not granted under the non-intercourse act of 1861, or any other act of Congress. The territorial operation of the permit was, in this instance, restricted to those parts of the States of Alabama and Tennessee which were occupied and controlled by the forces of the United States engaged in the dispersion of the insurgents, which territory was specially excepted from the operation of the non-intercourse act by the proclamation of the President; and being thus excepted, and occupied and controlled by military authority alone, commercial intercourse with its inhabitants was regulated alone by the will of the military commander, either by the grant of permits or the promulgation of orders.

In the case before the committee, the permit was issued by the direction of the Commander-in-Chief of the Army of the United States, the President, and indorsed by him, and also, as the evidence shows, by Andrew Johnson, then military governor of Tennessee, General O. M. Mitchell, and General D. C. Buell, commanding the department. It imposed no restriction, except as to the article, person, and territory, in which the intercourse was to be conducted. Under these circumstances, your committee is of the opinion, that in the absence of any such restriction, imposed either by the non-intercourse act, the rules and regulations already referred to, or by the express terms of the permit, that loyalty was not a condition of the intercourse.

Entertaining these views, your committee hold, that the two hundred and twenty bales of cotton before referred to, was purchased by the firm of Anderson & White, in or about Huntsville, Ala., within the lines of the Union Army, and under a permit granted by the Hon. S. P. Chase, Secretary of the Treasury, by the direction of the President, acting as Commander-in-Chief of the Army of the United States, to Anderson & White, allowing them to trade in and buy cotton in such parts of the States of Alabama and Tennessee as were within the lines of the Union Army; that the purchase of the cotton so made by them under such permit, was in every respect valid.

As to the impressment: On the 30th August, 1862, the following order was promulgated by Brigadier-General Rousseau, commanding at Nashville, Tenn.:

[General Order No. 5.]

The entire stock of cotton now stored in Nashville is hereby impressed into the service of the General Government. Captain Morton, of the Engineer Corps, is hereby authorized to take possession of it. The proper receipts will be given for the cotton, and it will be restored at as early a day as possible. *The owners are guaranteed against all losses, except those which depend upon the fortunes of war.*

By command of Lovell H. Rousseau, brigadier-general commanding.

W. P. McDONALD,
Acting Assistant Adjutant-General.

By virtue of this order, two hundred and eighteen bales of the cotton purchased by Anderson & White, at Huntsville, under the permit heretofore referred to, was impressed and used in the fortifications at and around Nashville. On the 24th September, 1862, two bales of cotton were taken possession of by Brigadier-General Negley, then commanding the post, for which the following receipt was given:

HEADQUARTERS UNITED STATES FORCES,
Nashville, Tenn., September 24, 1862.

Received from the warehouse of J. M. McAllister & Co., two bales of cotton owned by Anderson & White, marked A and W, to be used for the erection of military defenses on the following-named place: Broad street. Said cotton to be accounted for hereafter as the United States Government may determine.

By command of Brigadier-General Negley, commanding post.

FRED'K L. A. KENNEDY,
Aid-de-Camp.

Was the impressment authorized? The rule which will justify the taking of private property for defense or destruction is well settled, and rests upon the same principle which gives to the individual, the right in cases of aggression to life or limb, to take the life of the aggressor. In either case it is the necessity, seeming or real, which gives the right and justifies the individual or the officer.

In the case of *Mitchell vs. Harmony*, 13 Howard, 134, Chief-Justice Taney, with reference to the liability of the Government for acts of a military officer, uses this language:

There are occasions in which private property may be destroyed to prevent it from falling into the hands of the public enemy; also where a military officer, charged with a particular duty, may impress private property into the public service, or take it for public use. Unquestionably, in such cases, the Government is bound to make full compensation to the owner.

Again, as to the degree of necessity which will justify the officer, he says:

In deciding upon this, we must take our view from the stand-point occupied by the officer himself. The danger must be immediate or the necessity urgent for the public service—such as will not admit of delay. In deciding upon the necessity however,

the state of facts as they appeared to the officer at the time he acted must govern the decision, for he must necessarily act upon the opinion of others, as well as upon his own observation; and if, with such information as he had a right to rely upon, there is reasonable ground for believing that the peril is imminent or the necessity urgent, he is justified in acting upon it, and the discovery afterwards that it was false or erroneous will not make him a trespasser.

In the application of the rule as asserted by Chief-Justice Taney, your committee will look to the circumstances which existed, or appeared to exist, to the officer at the time the order of impressment was issued.

History informs us that, some short time before the date of the order referred to, by far the greater portion of the forces of the United States were withdrawn from Tennessee and sent in pursuit of General Bragg, the commander of the confederate forces in that department, who, by a flank movement, was marching on Louisville, Ky., thus leaving Nashville with a force too small, and fortifications too weak, to defend it, and with large quantities of public stores on deposit. The importance of the position, as well as the other circumstances referred to, could not fail to attract the attention of the enemy and, in all probability, invite an attack. Under these circumstances, the first step taken by the officer in command was to strengthen the fortifications. Delays were dangerous, and Brigadier-General Morton, of the Engineer Corps, was ordered to devise and superintend its defenses. A letter written by him, a copy of which is attached as part of this report, shows that the emergency demanded dispatch; that the scarcity of soil upon the hills surrounding the city, as well as the deficiency of labor and want of transportation, must cause delay; and thus it became a necessity that some other means should be resorted to by which the end could be more speedily attained. Temporary breast-works could be erected with cotton-bales, and cotton-bales were impressed and used for breastworks. The danger might not have been as imminent as was supposed by General Rousseau, but, from the stand-point from which he viewed it, the weakness of the defenses, the benefit which would accrue to the enemy from the supplies, as well as the other causes referred to, in the opinion of your committee, fully justified the commander in adopting with the least possible delay, those precautions which would be most effectual in averting the attack, or defeating it, if made. The exigency under which General Rousseau acted fully justified the impressment and appropriation of the cotton to the defenses of the city.

As to the loss and damages caused by the impressment: The evidence shows that the two hundred and twenty bales of cotton, belonging to Anderson & White, were taken under the orders referred to, and used in the fortifications at Nashville, where they remained until the 1st December, 1862, when they were allowed to take back 52 bales and three part of bales, and on the 16th December, of the same year, one hundred and thirty-five and three parts of bales, leaving in the fortification twenty-seven and six parts of bales, which have never been returned.

As to compensation: Undoubtedly in every case where property is rightfully taken by an officer for the public use, the owner is entitled to just compensation from the Government. But what is just compensation? Various definitions have been given. It is stated as meaning a "fair equivalent;" "that the person whose property is taken shall be made whole;" "that the language of the Constitution means that the person whose property is taken for public use shall have a fair equivalent in money for the injury done him by such taking; or, in other words, that he shall be made whole, as far as money is a measure of compen-

sation." Taking either of these definitions as the rate of compensation and the claimant would be entitled to receive—

1st. The value at the time of the taking of the twenty-seven and six parts of bales which have never been restored.

2d. The damages and loss to the one hundred and eighty-seven and six parts of bales which the owners were allowed to receive, by the loss of bagging and rope, loss in weight, expenses of transportation, putting them in the same order as when taken, and any other damage they may have sustained from the seizure and use.

This being the rule, its force could not be impaired by any exception which was made to it, and thus the question is presented as to the effect of general order number five, which, in express terms, excepts the two hundred and eighteen bales which were taken under it, from the hazards of war. Your committee hold, that when private property is taken for a public use, involving a service of peril and danger, the officer cannot impose a condition which exempts it from the hazards attaching to the service to which it was appropriated. To allow it, would virtually deny to the owner the right of compensation intended to be secured by the Constitution.

As to the two bales: The clause in the receipt which referred the disposition of them to the Government of the United States could only have been based upon the idea that the Government, by the seizure, virtually became the owner of the property, and as such had the right to control and direct its disposition; but whatever may have been intended by the conditions referred to, it is certain, that the liability of the Government to make just compensation is not in the slightest degree affected by either of them.

As to the loss and damages in addition to the twenty-seven bales and six parts of bales which have never been returned, and have thus become a total loss to the claimant, the evidence shows that the remaining cotton had been used at various points in and around the fortifications for several months, and the part returned was greatly injured and damaged in value as well as in loss of weight; and that all the cotton received back had to be rebaled to put it in shipping order; and for these and all other damages a special board of survey was convened by order of General Rosecrans in , 1862, to assess the loss and damages to the cotton impressed; that said board consisted of Edward A. King, colonel Sixty-eighth Ohio Volunteers, president; J. W. Langley, lieutenant-colonel One Hundred and Twenty-fifth Illinois Volunteer Infantry, and J. J. Donnelly, Captain Fourteenth Michigan Volunteers, recorder.

The evidence adduced before the board of survey may be summed up as follows:

J. A. McAllister states that they had on store in the warehouse two hundred and twenty bales of cotton belonging to Anderson & White, which were in good shipping condition; that two hundred and eighteen bales of this cotton were impressed by the military authorities on the 5th September, 1862; that the same were delivered by him and were removed to the fortifications, and that two more bales of said cotton were delivered to said authorities about the 24th September, 1862, which were also used in the fortifications. The first lot of two hundred and eighteen bales were taken by the order of General Rousseau, and the second lot of two bales by the order of General Negley, then commanding at Nashville; that said cotton was all marked A & W, and was in a good shipping condition when taken by the military authorities; that none of the cotton was ever returned, in the

literal sense of the word; but they were allowed to take out from the defenses one hundred and eighty-seven bales and six parts of bales, which was all that was ever returned, and most of that was in very bad order from exposure to the weather. That the damages were assessed on all that was restored, except twenty-seven bales of the one hundred and eighty-seven bales. That the twenty-seven bales would have been assessed, but that competent judges were not available at the time. He states that the twenty-seven bales not assessed were damaged to some extent, but does not think it was as much damaged as the balance of the lot returned. That it could not have been used on the fortifications and returned in the condition it was at the time of the return, without loss of weight. That counting the six parts of the bales returned as whole bales, there were twenty-seven bales and six parts of bales of Anderson & White's cotton that was never returned. That his charge to Anderson & White for storage on their cotton after it had been returned from the fortifications was \$96.50. That he also paid the bill for hauling the cotton from the fortifications to the warehouse, which amounted to \$171.50, and that he charged Anderson & White \$309.25 for repairing the cotton-bales after their return from the fortifications. That in weighing the cotton, he made allowance for the moist state to the extent that, in his judgment, would make the weights that of dry cotton. That the cotton-bales generally had the appearance of having had cotton lost from them. That he charged 50 cents a bale for storage on said cotton, which was the usual charge in Nashville at that time. That he did not make the application to return the cotton by public conveyance, nor does he know that Anderson & White did; and that he has no interest whatever in the claim. That the damages were assessed by A. Hamilton, A. K. Griffin, and N. E. Alloway; these gentlemen were all cotton-merchants in this city, and he thinks them qualified to make such assessment. That the aggregate weight of the six parts of bales returned was one thousand eight hundred and sixty-nine pounds. They did not weigh each part separately. Was acting for Anderson & White in their absence. Mr. White was in Nashville for about two weeks before the cotton was returned, and attended to it in person.

A. K. Griffin states that he was present and made the assessments named C and D, to which his name is attached, and that the cotton so assessed was some of it rotten, the bagging torn, and ropes rotted off, and some of it soiled with mud; that in making the assessment of so much per pound damage, they took 55 cents per pound as the basis of the calculation; that cotton was worth in Nashville 55 cents per pound at the time it was returned from the fortifications, and that the damages were assessed without reference to the weights; that he assessed the damages on sixty-one bales of cotton marked A & W, and three parts of bales, at 4 cents per pound on the full bales and 20 cents per pound on the three parts of bales, and assessed the damages on forty-seven bales of the same mark at 3½ cents per pound. From the statement made by Mr. J. A. McAllister as to the condition of the cotton when impressed and put into the fortifications, it suffered extraordinary loss in weight while being used there, but he cannot state the extent of waste, &c.

A. Hamilton: That he was called upon to make assessments of damages to a number of bales of cotton belonging to Anderson & White, and did make such assessments. On the 1st day of December we assessed damages on fifty-two bales of cotton, marked A & W, and three parts of bales, at four cents per pound on the fifty-two bales, and

twenty cents per pound on the three parts of bales; and on the 24th day of December, 1862, we assessed damages on sixty-one bales of the same mark, and three parts of bales, at four cents per pound on the sixty-one bales, and twenty cents per pound on the three parts of bales. The damage was occasioned by exposure to the weather, by rotting of the rope-bagging and cotton; all was more or less damaged; that he assessed on the parts of bales at a higher rate per pound than on the full bales returned, because the damage to the parts of bales was to an extent to make the cotton almost worthless.

N. E. Alloway fully corroborates the statements of A. K. Griffin and A. Hamilton.

John W. White testifies that two hundred and six of the two hundred and twenty bales were purchased eight miles from Huntsville, Ala.; that it was not weighed to him when he bought it, but that he accepted the weights of said cotton, which was an average of five hundred and twenty-one pounds per bale, and that fourteen of the two hundred and twenty bales were purchased of Jolly, of Huntsville.

Upon this evidence and the receipts, orders, and affidavits, heretofore referred to, the board of survey convened by Maj. Gen. Rosecrans, as before stated, rendered the subjoined award or report, which is in the following words and figures, to wit:

THE UNITED STATES TO ANDERSON & WHITE,	DR.
To damages on 61 bales of cotton, weight 30,987 pounds, as assessed at 4 cents per pound.....	\$1,239 48
To damages on 47 bales of cotton, weight 23,612 pounds, as assessed at 3½ cents per pound.....	826 42
To damages on 52 bales of cotton, weight 26,592 pounds, as assessed at 5 cents per pound.....	1,329 60
To damages on six parts of bales, weight 1,869 pounds, as assessed at 20 cents per pound.....	373 80
To 27 bales of cotton lost in the fortifications, weight 14,276 pounds, from which is deducted 6 pounds per bale for waste in transportation to Nashville, leaving 14,114 pounds, at 55 cents per pound.....	7,762 70
To damages on 27 bales upon which the damages were not assessed, weight, in Huntsville, 14,276 pounds; weight after deducting 6 pounds per bale, 14,114 pounds; weight after deducting 8 pounds per bale loss sustained in the fortifications, 13,898 pounds, at 1½ cents per pound.....	208 47
To loss on weight on 160 bales of cotton, 15 pounds per bale, 2,400 pounds, at 55 cents per pound.....	1,320 00
To loss in weight upon 27 bales, (upon which damages were not assessed,) 8 pounds per bale, 216 pounds, at 55 cents per pound.....	118 80
Loss in weight on 6 bales, 1,267 pounds, at 55 cents per pound.....	751 85
To McAllister's bill for storage.....	66 50
To McAllister's bill for drayage.....	171 50
Total	14,199 12

The report thus made was disapproved by General Rosecrans on the ground, that the cotton returned was worth more, notwithstanding its waste, than the cotton originally seized.

In thus holding, your committee are clear in the opinion that General Rosecrans was in error. The proposition that where private property is taken for a public use, involving temporary service only, that the Government should be released from responsibility for one-half of the property because the whole had doubled in value, is sustained neither by principle or authority. It is true that where a part only of land is taken under the right of eminent domain, and the use to which it is appropriated will increase the value of the remainder not taken, that, in the ascertainment of compensation, the benefit as well as the loss is taken into

the estimate, and just compensation is to be found in the difference. But here there is no evidence tending to show that the use to which the cotton was appropriated increased its value. The evidence shows directly the reverse. The use to which it was appropriated brought with it but injury and loss. Other circumstances entirely disconnected with the use, increased the price, not only of cotton belonging to the claimant, but of cotton belonging to all other persons; and the rule is well settled that such benefits are always excluded in the estimate of just compensation.

Your committee, therefore, in view of this array of evidence adduced in support of this claim, having fully considered and weighed the same, are of opinion, that the United States should pay the surviving partner, John J. Anderson, just compensation for the losses and damages sustained by him by reason of this impressment; that the award made by the board of survey is eminently just, as far as it goes, but that there is an item of expense incurred by the claimants, which is fully proven by the affidavit of J. A. McAllister, Anderson & White, and others, which should be added to the aggregate amount awarded by said board of survey. This item is for bagging and rope, amounting to \$309.25.

Your committee, therefore, report that there is due from the United States to the surviving partner, John J. Anderson, the following sums of money, viz :

THE UNITED STATES TO JOHN JAY ANDERSON, survivor, &c.,	DR.
To aggregate amount of award made by board of survey, convened on the — day of —, 186—, particulars of which are fully set forth in the award or judgment of said board of survey heretofore named, and specifically set forth in this report	\$14,199 12
To amount paid out for bagging and rope necessary to put the cotton, the claimants were permitted to take out of the fortifications, in shipping condition, by rebaling the same.....	309 25
Total	14 508 37

Your committee recommend the passage of a bill appropriating to John Jay Anderson, surviving partner of the firm of Anderson & White, out of any money in the United States Treasury not otherwise appropriated, the sum of \$14,508.37, and in accordance with such recommendation, report the following bill :

A BILL for the relief of John Jay Anderson, surviving partner of the firm of Anderson & White.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby appropriated, out of any money in the United States Treasury not otherwise appropriated, to John Jay Anderson, surviving partner of the firm of Anderson & White, the sum of fourteen thousand five hundred and eight dollars and thirty-seven cents, in full of all claims of said Anderson & White, or either of them, against the Government of the United States for cotton impressed by the authorities of said Government belonging to said firm in September, A. D. 1862.

HEADQUARTERS PIONEER BRIGADE,
ARMY OF THE CUMBERLAND,
Camp near Murfreesborough, March 10, 1863.

GENERAL. During the retreat of the Army of the Ohio into Kentucky, Nashville was left to its own defense. I was ordered to devise and superintend its defenses. The dispatch demanded by the emergency, and the want of other means, (such as were involved by the scarcity of soil on the hills, and the lack of labor, transportation, &c.,) rendered it necessary that I should impress cotton-bales and make temporary breast-

works of them. This step was ordered to be taken by General Rousseau, (see his order No. 5, dated August 30, 1862,) and was carried into execution by my subordinates, who gave memorandum receipts for the bales they impressed. The cotton was guarded, at my request, by United States troops. These, it was found, sold much of it, and destroyed much. Some was burned while under guard, whether by accident or not I never ascertained. Some was damaged by rain and mud. When the breastworks became superfluous, and after the return of the Army to Nashville, the cotton was ordered by you to be restored to its respective owners. The damage to the cotton returned, the loss of weight on the same, and the loss of cotton-bales which are not to be found, (having been sold or burned,) and the expenses incurred by the owners in rebaling, hauling, and storage while rebaling, constitute claims against the United States which begin to be presented. One has been presented by Anderson & White. I have thoroughly possessed myself of all the facts of the case and have determined to issue them a certified account, which will enable them to obtain payment in full from the United States Treasury. As, however, there is a great amount of money involved in the transactions of which this is the first to be settled, I most respectfully request that you will cause the lost cotton to be valued and my certified account to be audited by one or more commissioners appointed by yourself, to the end that I may be freed from a part at least of the responsibility, and that it may be apparent to the United States Treasurer, or his officers, that the settlement has been properly effected.

J. S. A. C. MASTON,
Captain of Engineers, Chief Engineer Army of the Cumberland,
 Per FRANCIS PEARSAL,
Assistant Engineer.

Maj. Gen. W. S. ROSECRANS,
Commanding Department of the Cumberland.

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IN THE SENATE OF THE UNITED STATES:

APRIL 3, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 658.]

The Committee on Pensions, to whom was referred the petition of Martin V. Jackson, late first lieutenant in Captain N. J. Roscoe's company, Second Regiment of Kansas State Militia, have had the same under consideration, and submit the following report:

The petitioner alleges that in the spring of 1861 the regiment to which he belonged was called into service by the governor of the State to repel invasion and to enforce the laws of the State and of the United States against rebels coming in from Southern Missouri; that during the month of August, 1861, his said company was called into active service by A. A. Roberts, acting sheriff of Miami County, Kansas, for the purpose of repelling a threatened invasion of said county and State, and that during said term of service, viz, on the 21st day of August, and while in the line of duty, in a skirmish with those in armed rebellion against the authority of the United States, he was wounded by a rifle-shot in the left knee, from the effects of which his left limb had to be amputated near the hip-joint. Petitioner represents that he has a family dependent upon him for support, which, in his maimed condition, he is unable to give them and educate his children.

There is sufficient proof of the service and of the injury received by petitioner, and a number of his neighbors testify to his good character and worth as a citizen, urging, at the same time, his claims upon the Government for relief. The only question to be considered is the authority under which his company took the field. The testimony of those who were present when the company was ordered out, and who were in the same service with it, is that the acting sheriff of Miami County, Kansas, called them out as a *posse* to aid him in enforcing the laws and to repel threatened invasion; while the then governor of Kansas testifies that during the month of August, 1861, soon after the battle of Wilson's Creek, in Missouri, the organized rebel force along the line between Kansas and Missouri became so dangerous that Major Prince, of the United States Army, commanding at Leavenworth, requested the executive of Kansas to send State troops to the said boundary-line to protect the Kansas border; and in pursuance of that request he organized a *posse* under command of Captain Earle, and ordered him out on said line, with instructions to call out the different companies of militia then organized along said border; and that under said order Captain Roscoe's company, at Osawatomie, of which peti-

tioner was first lieutenant, was called into service, as witness was informed and believes, to protect said border.

It is to be inferred, from the late governor's testimony, that no accurate record was kept by the authorities of the State military operations, which were of so frequent occurrence during the whole period of the war, either in support of Federal operations or for the protection of life and property against marauders and organized confederate troops in the absence of Union forces. While there is no evidence of the service from either national or State records, nor any positive evidence at all in the case showing that Captain Roscoe's company received the orders transmitted by the governor through Captain Earle, yet it is certain that the company was in service at the time and place designated, and that petitioner was wounded in a skirmish with the enemy. His case, therefore, in the judgment of the committee, comes fairly within the provisions of the first section of the act of March 3, 1873. The accompanying bill is therefore reported.

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IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 2455.]

The Committee on Pensions, to whom was referred the bill (H. R. 2455) granting an allowance to soldiers who have lost an eye, have had the same under consideration, and submit the following report :

The bill provides that any soldier who, in the United States service, in the line of his duty, lost an eye, shall be entitled to receive, for the purpose of replacing the same by an artificial eye, the sum of \$30, which shall be paid under such rules and regulations as the Commissioner of Pensions may prescribe.

It makes no provision for the officers, warrant officers, and seamen of the Navy, who are more likely to have suffered such losses than soldiers of the Army. Nor does it make any appropriation out of which applicants can be paid if it should become a law. It is inferred, however, from the language of the bill, that payments made under it would be a charge upon the pension-fund.

But if these omissions be supplied by amendments, it is then proper to inquire whether it is expedient to make an appropriation for such an object. If the design be to aid the sufferer the more efficiently to prosecute his trade, calling, or profession, then the relief proposed would, in the judgment of the committee, reach but a very small proportion of those intended to be provided for. Non-commissioned officers and privates of the Army, and petty officers and seamen of the Navy, make up nearly the entire class which would be embraced in the bill if amended as suggested; and these, for the most part, are plain, practical, industrious men, who could not be persuaded to waste time in adjusting artificial eyes. They have their families to support and their taxes to pay; and, even if they have not these demands upon their leisure, would feel humiliated to be seen with a sham eye in their heads; and it would seem, from the language of the bill, to be an eye or nothing.

If it was an appropriation of money to be paid to the recipient, to be expended in his own way, it would hardly compensate the applicant for the expense and trouble of establishing his claim; in fact, so insignificant is the amount, when considered in the way of compensation for the injuries sustained, if that is the object, as to be absolutely contemptible.

The committee are impressed with the belief that it would be an injudicious expenditure of the public money, and therefore recommend the indefinite postponement of the bill.

1 January 1901
The Committee on Finance
has the honor to acknowledge the receipt of your letter of the 28th inst. in relation to the proposed bill for the relief of the soldiers of the late war, and in reply to inform you that the same has been referred to the proper authorities for their consideration.

The Committee on Finance is pleased to learn that you are interested in the proposed bill, and in reply to inform you that the same has been referred to the proper authorities for their consideration. The bill provides that any soldier who is entitled to receive pay for the term of his duty, but who is unable to receive the same, shall be entitled to receive the same, and that the same shall be paid under such conditions as the Committee on Finance may determine.

It is the policy of the Government to provide for the relief of the soldiers of the late war, and it is the duty of the Government to provide for the relief of the soldiers of the late war. The bill provides that any soldier who is entitled to receive pay for the term of his duty, but who is unable to receive the same, shall be entitled to receive the same, and that the same shall be paid under such conditions as the Committee on Finance may determine.

It is the policy of the Government to provide for the relief of the soldiers of the late war, and it is the duty of the Government to provide for the relief of the soldiers of the late war. The bill provides that any soldier who is entitled to receive pay for the term of his duty, but who is unable to receive the same, shall be entitled to receive the same, and that the same shall be paid under such conditions as the Committee on Finance may determine. The bill also provides that the same shall be paid under such conditions as the Committee on Finance may determine.

It is the policy of the Government to provide for the relief of the soldiers of the late war, and it is the duty of the Government to provide for the relief of the soldiers of the late war. The bill provides that any soldier who is entitled to receive pay for the term of his duty, but who is unable to receive the same, shall be entitled to receive the same, and that the same shall be paid under such conditions as the Committee on Finance may determine. The bill also provides that the same shall be paid under such conditions as the Committee on Finance may determine.

IN THE SENATE OF THE UNITED STATES.

APRIL 6, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

[To accompany bill H. R. 1122.]

The Committee on Pensions, to whom was recommitted the bill (H. R. 1122) granting a pension to Mrs. Martha E. Northrup, having again considered the evidence before them submitted with the first report, with additional evidence submitted, report :

We are satisfied, upon an examination of the inquest submitted in the first report, and herein referred to and made a part of this report, that no evidence of the previous habits of Lieut. E. B. Northrup, husband of the beneficiary in the bill, was before the jury at Sioux City, Iowa, March 5, 1873, or the finding would not have been "that he died while in a state of great nervous and mental prostration, brought on by the excessive use of intoxicating liquors," thereby leaving the impression that the deceased was an habitual drinker, if not something more. We refer to the official certificates of Capt. R. W. Tyler and Lieutenant Burns, herewith filed, both of whom have known and served with Lieutenant Northrup for years, as well as to the official certificate of Gen. Allan Rutherford, Third Auditor United States Treasury, who also knew and served with Northrup, all of whom testify to his uniform temperance, almost uniform abstinence from the use of strong drink in any manner. "He was of an impulsive temperament, and habitually abstained from the use of any intoxicating liquors, knowing that a slight indulgence produced great mental excitement." This is the testimony of two of his brother officers yet in the service, on the retired list from the loss of limbs in the service. We cannot avoid the conclusion that the inquest, unexplained, was and is well calculated to cover with dishonor the memory of Lieutenant Northrup, and to bring shame and confusion upon his family. The truth is, he was not an intemperate man, but, being at Sioux City, on his return from a leave of absence to join his command, alone and in the midst of strangers, filled with grief over the recent death of a brother and sister, he incautiously tasted liquor, and soon submitted to its wild and merciless demands, for a moment lost his balance, and, under temporary aberration, took the fatal dose which led to his death. He had been upon many battle fields, entered the service as a mere youth, and, faithful to his patriotic emotions, remained in it to the end of the war; and then, upon the restoration of peace, entered the Army, probably for life. The testimony as to his courage, faithfulness, fitness, integrity, and efficiency is ample and most satisfactory. Shall the circumstances of his unhappy death withdraw from his noble merits the gratitude of his country? He did not die,

but he was twice wounded in battle. He was not with his command, but he was at Sioux City, Iowa, on his way to join it, awaiting only the necessary force or escort to return to it at the first opportunity. He could not venture alone across several hundred miles to his post on the frontier, through Indian country.

Considering the case in all its bearings, the condition of his family, the merits of the soldier, and the favorable consideration it has heretofore received, we again report the bill favorably, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

The Committee on Claims, to which were referred the petition and accompanying papers of Robert M. Douglas and Stephen A. Douglas, claiming to be paid for cotton and other property, have had the same under consideration, and now ask to make a partial report :

The petitioners are citizens of Rockingham County, in the State of North Carolina; they are sons of the late Hon. Stephen A. Douglas. The former came to the age of twenty-one years on the 28th day of January, A. D. 1870; the latter on the 3d day of November, A. D. 1871. They have both always been loyal to the Government of the United States, and never resided in North Carolina, or any Southern State, until since the late war. Their mother died many years ago, leaving them her only children surviving. She was a native of the State of North Carolina, and through her they became the owners of a large number of negro slaves, and much other valuable property. Their father at the time of his death was, and for many years before that time had been, guardian for their said property. In the year 1857 their father, as their guardian, placed their slaves, numbering one hundred and forty-two, in the custody and control of Mr. J. A. McHatton, of the State of Mississippi, in pursuance of a contract which was in substance this: McHatton was the owner of a large tract of land situate in Washinton County, in said last named State. The Douglasses owned the said slaves and other property. McHatton bound himself to take charge of the farm and manage it. Disinterested persons were to appraise the land and the slaves and other property, and the profits arising from the cultivation of the said land by the said slaves under the superintendence of said McHatton were to be divided between said McHatton and the said Douglasses, in the proportion of the appraised price of the land to the appraised price of the slaves and other property. Such appraisement was duly made; the land was estimated at \$80,000, the negroes and other property at \$118,000. This contract was to continue from the 1st of December, A. D. 1857, until the younger of the said Douglasses should come to be of the age of 21 years. The said McHatton, in pursuance of such contract, cultivated said lands and produced large crops of cotton, corn, and other things until the spring of the year 1863.

After the beginning of the late war neither the said petitioners, then under 21 years of age, nor their said guardian, had any communication with said McHatton.

During the years 1861 and 1862 the said McHatton and his overseers constantly apprehended that the products of said farm would be seized

or destroyed by the confederate or Federal troops; and with a view to save the cotton on hand, consisting of 1,685 bales, it was removed to a secret and remote place on the farm in a cane-brake, and there packed on logs and covered with rough boards, and it there remained until the month of March, 1863, when a body of United States troops, under the command of Gen. T. E. G. Ransom, seized the same, and placed it, or much of it, on board transports on the Mississippi River. What he did with the cotton does not certainly appear; but the reasonable inference is warranted by the facts, as they appear, that it was duly sold and the proceeds of the same passed into the Treasury. Exactly how much—how many bales—of cotton were put on the transports does not appear, but a greater number than 1,000 bales were so placed on the transports.

The evidence further shows that there were on the said farm at the time General Ransom seized said cotton about 15,000 bushels of corn, the proceeds of the crops of 1860, 1861, and 1862; 53 stacks of fodder, 292 head of hogs, 63 head of cattle, 93 mules, 3 horses, and much other property, consisting mainly of farming-implements. The said corn, fodder, hogs, mules, and horses were taken by General Ransom's command for the use of his soldiers, or were destroyed by them, and the farming-implements were broken up and rendered useless.

The evidence going to show that General Ransom got more than 1,000 bales of cotton aboard his transports, that a quantity of said cotton was burned by his troops, they being apprehensive of an attack from confederate troops, that his troops got said corn and other things and used and destroyed the same, is strong and convincing, but General Ransom gives no statement about the seizure; he promised to do so, but apprehending an attack from the enemy, he left suddenly, and before the time he directed the overseer to come to him and get a proper certificate. He afterward died, and before petitioners could get any certificate from him. One witness, James S. Dodds, who was the overseer of the farm, swears positively to the facts, and he states them in great detail. He is sustained by a great number of witnesses who swear to facts which go very strongly to sustain him. If the testimony is to be believed, (and the committee now see no room to disbelieve it,) more than 1,000 bales of cotton belonging to the petitioners were taken aboard the transports as herein stated.

But it appears from evidence in the possession of the Secretary of the Treasury that all the cotton seized in the said county of Washington, in said State of Mississippi, and accounted for to the Treasury, amounted to 2,180 bales, and this was seized by General Ransom's command. Some of this cotton—it does not appear how much—an indefinite quantity, was marked "C. S. A." The Secretary of the Treasury furnishes the committee with the information contained in a letter of which the following is a copy, viz:

TREASURY DEPARTMENT,
Washington, D. C., February 25, 1874.

SIR: I have the honor to acknowledge the receipt of your communication of the 14th instant, requesting information concerning cotton seized in Washington County, Mississippi, for the use of the Committee on Claims, in considering the claim of R. M. and S. A. Douglas.

The cotton, amounting to 2,180 bales, captured in said county, in March, 1863, by the expedition under Gen. T. E. G. Ransom, was forwarded to Memphis, and transferred to Capt. G. L. Fort, assistant quartermaster, who takes it up on his return of quartermaster's stores for the month of April, 1863, as received from the following sources, viz:

"Being the same and all the Government cotton brought to Memphis, Tenn., on the 5th of April, 1863, on the steamboat *Empress*, and turned over to Captain Fort, assistant quartermaster, by order of Capt. C. A. Reynolds, chief quartermaster, Department of Tennessee; and being understood to be the same lot of cotton seized by Capt. E. D. Osband, Fourth Illinois Cavalry, in Mississippi. Most of this cotton was marked 'C. S. A.,' and was received in a very bad and damaged condition."

The money accounts of Captain Fort show the sale of 2,111 bales of cotton, on the 10th of April, 1863, the proceeds amounting to \$429,663.39, which sum is credited to the United States by Captain Fort, and used and expended for the ordinary purposes of the Quartermaster's Department. The remaining 69 bales were transferred to agents of the Treasury Department, sold, and the proceeds, amounting to \$9,502.68, paid into the Treasury. The proceeds arising from the 2,180 bales is therefore \$439,166.07. The proceeds of 54 bales, amounting to \$9,112, were released to Mrs. B. A. Wilson, the claimant thereof, by Captain Fort at Memphis.

Judgments have been rendered by the Court of Claims against such proceeds as follows:

In favor of S. Worthington's administratrix, for 814 bales, amounting to \$165,673.42, and in favor of W. W. Worthington for 222 bales, amounting to \$45,177.

Deducting such allowances the fund remaining is \$219,193.65 arising from 1,090 bales.

The following claims are still pending in the Court of Claims against said fund:

	Bales.
Nanette Abell.....	100
J. J. Person.....	425
F. A. Metcalf.....	55
B. S. Compton.....	782
A total of.....	1,362

The records of the confederate cotton-agent for Mississippi, in possession of this Department, show that James S. Dodd's agent sold to the confederate government 163 bales of cotton for Douglas and McHatton and C. G. McHatton and others, located in Washington County, Mississippi, and that the same were burned by the confederate military authorities in March, 1863. In a report of an agent for examining the condition of cotton of the confederate government in said county, dated in January, 1863, a description is given of the following lots of cotton:

"No. 7. On the 'Wilson burn.' A lot of about 460 bales marked 'Catalpa' and 'C. S. A.' belonged to Hon. C. S. and Dr. Morehead."

"No. 8. Same place. Mrs. B. A. Wilson's 154 bales, marked 'L.,' and 'C. S. A.'"

"No. 9. Same place. About 65 bales, marked '*' and 'C. S. A.,' belonged to Miss Bettie Miller.

"No. 10. Same place. Marked 'Avon' and 'Ashland' and 'C. S. A.,' about or over 500 bales belonged to E. P. Johnson.

"No. 11. Same place. About or over 150 bales, marked 'Ashland' '*' and 'C. S. A.,' belonged to E. P. Johnson."

In a subsequent letter the same agent reports as follows:

"The Federals are now nearly all round us. They came into Lake America with transports and a gun-boat, and a large body of infantry and some cavalry, and made a descent on the Granicus cotton, (E. P. Johnson's 715, Miss B. Miller's 62, Mrs. B. A. Wilson's 154, and W. Morehead's 332—1,263 bales,) and they are now engaged in hauling it."

Under date of March 26, 1863, he also reports: "A gun-boat and transports are yet in the lake engaged in carrying off Nos. 7, 8, 9, 10, and 11. They have a considerable body of troops aiding them to get away cotton. They get 1,263 bales of government cotton and some of individuals to make 1,800 or 1,900 bales."

The foregoing comprises all the information in the Department relative to the ownership of the cotton captured in Washington County, Mississippi, in March 1863.

The record in the cause of Samuel Worthington's administratrix, No. 3,328, in the Court of Claims, contains further information on the subject.

Very respectfully,

WM. A. RICHARDSON,
Secretary of the Treasury.

Hon. JOHN SCOTT,
Chairman Committee on Claims, United States Senate.

It is insisted by the counsel of the petitioners that the said claims of Nanette Abell for 100 bales of cotton; that of J. J. Pierson for 425 bales; that of B. S. Compton for 782 bales, are not established, and cannot be. If he is correct in this view, then there will remain in the Treasury the proceeds of cotton seized in said county of Washington unclaimed save by the petitioners, a sum of money about equal to the sum claimed by the petitioners for their cotton, and this circumstance will go far toward establishing the fact that the proceeds of their cotton, which they insist they have proven, was put aboard the Government transports

under command of General Ransom, passed into the Treasury. If, however, it shall turn out that said claimants, who are now so suing before the Court of Claims, shall establish their claims, respectively, it will be a strong circumstance tending to show that the Government never received the cotton of the petitioners or any proceeds of the same.

When the said suits so pending in the Court of Claims will be disposed of does not appear; indeed, it is probable, as the committee learn, that they may yet continue in court for a long while.

The time within which the petitioners might have sued in the Court of Claims expired before they came of the age of twenty-one years, and there is no saving clause in favor of infants.

The petitioners claim that they are entitled to be paid for all of their said cotton, 1,685 bales; but they are content to receive pay for one thousand bales; they are sure, as they say, that the Government received more than that number of bales. They also insist that they are entitled to be paid for said corn and other property.

The said McHatton disowns any interest in said cotton and said other property; he says and swears that he has no interest in the same; that he received of the proceeds of said farm and the labor of said slaves in the State of Texas, in 1863 and 1864, a sum quite equal to any interest he might be supposed to have under said contract made between himself and the said guardian of petitioners in said cotton and other property.

The committee do not now make any report as to said corn, and property other than the said cotton; and as to the said cotton, while they have a strong conviction that at least 1,000 bales of it was shipped by General Ransom to some proper depot for the Government, they do not feel warranted in recommending that the same be paid, for they think that there should be further inquiry into the matter and before a judicial tribunal where the Government may be represented by able counsel.

The committee therefore, upon consideration, recommend that the claim of the said petitioners, for said cotton, be referred to the Court of Claims, and report the accompanying joint resolution and recommend that the same be passed.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1874.—Ordered to be printed.

Mr. FENTON submitted the following

REPORT:

[To accompany bill S. 452.]

The Committee on Finance, to whom was referred the petition, and bill (S. 452) and accompanying papers, for the relief of John McHarg, after due consideration make the following report:

The petitioner, McHarg, was successively the internal-revenue collector of the fifth and the third (or consolidated) districts of New York. While collector of the former district one of his deputies, John A. Phillips, embezzled about \$41,000 of the funds coming into his hands—proceeds of internal-revenue stamps—and subsequently fled to Europe. This bill directs the accounting officer of the Treasury, in settlement of McHarg's accounts, to allow him such a sum as he may show was thus embezzled; provided, that if any part of said sum of money shall hereafter be recovered, the same shall inure to the United States.

The committee do not believe that this defalcation occurred through any neglect of duty by Mr. McHarg. On the contrary, it is easily seen how a faithful and vigilant officer could be misled by an intelligent and artful deputy, by suppressing certain monthly reports which it was his duty to forward to the Internal Revenue Department after they were examined and signed by the collector. As proof that McHarg was not deemed culpable by the Department the committee take the liberty to submit herewith a letter from the Commissioner of Internal Revenue, as follows:

TREASURY DEPARTMENT, OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, March 31, 1874.

SIR: In compliance with your request of the 27th instant, I have the honor to inform you that it appears from the records of this office that the reports of tobacco and cigars stamps, on Form 76, from John McHarg, late collector of the fifth district of New York, for the months of July, August, September, October, November, and December, 1869, and January and February, 1870, were not received at this office until March 19, 1870.

I have the honor further to state that, from the best information this office has been able to obtain, this delay in rendering reports on Form 76 was not the personal fault of late Collector McHarg, but owing to the misconduct and embezzlement of late Deputy Collector Phillips.

Very respectfully,

J. W. DOUGLASS,
Commissioner.

Hon. R. E. FENTON,
Finance Committee, U. S. Senate, Washington, D. C.

It will be observed that Form 76 related to tobacco and cigar stamps. There were other forms, for instance 22, which referred to the record of

sources from which revenue was drawn ; and Form 108, which related to gaugers' returns.

And these monthly statements, embracing returns of business, were required to be filed in the Department on or before the 10th day of each month. Thereupon the Department, if everything is found correct, transmits to the collector, monthly, pay for himself, assistant assessors, expenses of office, &c. No notice or intimation from the Department came to McHarg that this report had been suppressed until months had elapsed ; the embezzlement had taken place, and Phillips, the deputy, had fled. And yet McHarg had been advised of discrepancies or omissions in one or two other respects of less importance, as in the failure to forward Form 22, on one occasion ; and again, Form 108, and he was fully justified in supposing that the accounts, in all other particulars, were correct.

In a previous communication from the Commissioner of Internal Revenue, January 30, 1873, the Commissioner gives it as his opinion that the loss sustained was occasioned by no fault or negligence of McHarg, and that as the collections in his district were large it was an easy matter for his deputy to retain, from time to time, the sum in question, and to mislead McHarg and the Department at Washington. The Commissioner also refers to the fact that upon the expiration of his term of office as collector of the old fifth district, he was appointed to the third district, and concludes his letter by indorsing McHarg as having "always been regarded as an efficient and worthy officer." The Department gave striking proof of confidence in the capacity and fidelity of McHarg by re-appointing him, after this unfortunate occurrence, to the third or consolidated district, which position he continued to hold until March 31, 1873—over three years—and until he voluntarily resigned.

It appears that Mr. McHarg took energetic measures to arrest Phillips on his arrival at Queenstown, Ireland, by telegraphing to the police of that place to secure his person on arrival in that port.

After a confinement in prison of about six weeks, and numerous dispatches between McHarg and the authorities there, the magistrate discharged him, as the crime of forgery could not be established, which was necessary to secure his return under our extradition treaty with Great Britain.

It may be here stated that McHarg found Phillips in the office when he entered upon the duties of collector ; that he bore a good character, and upon being continued by McHarg, he promptly gave bail in the sum of \$20,000, with two sureties, who were deemed highly reputable and responsible men, as shown by the affidavits and papers herewith submitted. So the committee do not see that McHarg is chargeable with any want of attention or business caution in this respect. These sureties have been duly prosecuted in the courts by McHarg and judgment obtained, but one of them has absconded, and the other had no property at last ; so the effort to recover has proved futile.

There are several precedents which go to sustain the committee in recommending the relief sought in this instance, to wit :

Logan H. Roots, collector 1st district, Arkansas, (U. S. Stat., 16, 690 ;) S. S. Bailey, collector 4th Mich., (U. S. Stat., 17, 652 ;) John T. Mason, collector of customs, Baltimore, (U. S. Stat., 17, 723 ;) Thomas and Webster, collectors of customs and depositary, Baltimore, Md., (U. S. Stat., 16, 723 ;) General Hillhouse, assistant treasurer at New York.

In view of the large amount of collections at this office, which served to make the embezzlement more easy ; the high character and good official conduct of McHarg ; his faithful effort to punish Phillips and recover from the sureties, and especially in view of the fact that the

Department failed to notify McHarg of the omission of Form 76, which would have led to detection at once, the committee deem this also a proper case for the interposition of Congress, and they unite in recommending the passage of the accompanying substitute to the bill which was referred to them. In a word, it does not seem that taint of fraud or suspicion of wrong rests upon McHarg, nor that the loss occurred through fault or neglect on his part.

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IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1874.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

The Committee on Claims, to whom were referred the petition and accompanying papers of Charles W. Adams, by which he demands \$157,665.25 for property sold and seized, loss of profits, and injury to vessel, &c., have had the same under consideration, and submit the following report:

The claim and the ground upon which it is based are stated in full in the petition, and we cannot better present them than by quoting the same in full:

To the Senate and House of Representatives of the United States:

Your petitioner, Charles W. Adams, of the city of New York, is a citizen of the United States, and a native of the State of New Hampshire, and was engaged in business as a merchant in Boston, Mass., from 1852 to 1863.

In the month of December, 1863, after intelligence of the occupation of the harbor of Brazos de Santiago, and of the city of Brownsville, Tex., by the forces of the United States, had been received in the city of New York, he purchased at that place, through his agent, William Y. Loud, of Orrington, Me., and shipped on board of the *Scylla*, an English brigantine which he had chartered, a cargo of merchandise suited to the Havana or Matamoras market, intending to dispose of the same at one or the other of those ports, as circumstances should determine. An invoice of such cargo is hereto attached, (Exhibit 1.)

Not satisfied with the market of Havana he, on the arrival of the *Scylla* at that port, sailed with the vessel and cargo to Matamoras, and came to anchor in Mexican waters below the mouth of the Rio Grande, on the 16th of January, 1864. (Exhibits 7 and 9.)

He himself proceeded to Matamoras, and there, on or about the 22d January, 1864, made an arrangement with Capt. John L. Routt, chief quartermaster of the United States forces on the Rio Grande, (with the approval of Maj. Gen. F. J. Herron, commanding officer of such forces,) to sell to him, for the use of the United States, a large portion of such cargo, at certain agreed prices, which amounted in the aggregate to about ten thousand dollars in gold coin of the United States, which was to have been paid to him by said quartermaster in such gold coin, or its equivalent in United States Treasury notes. (Exhibits 1, 4, 7, 9, 17.)

Pending the negotiation for, and the consummation of, the sale of such merchandise, and before its unlawful seizure, as hereinafter mentioned, an arrangement was entered into between your petitioner and Captain Brewster, aid-de-camp of Major-General Herron, whereby the latter, on behalf of the United States, was to sell to your petitioner a cargo of cotton, to be laden on board the *Scylla*, at the then current price of the same at Matamoras, (which cotton was represented to your petitioner to be then at Point Isabel, under the control of the military forces of the United States,) for which your petitioner was to pay partly in the merchandise sold by him to Captain Routt, as above stated, partly in six thousand dollars of gold coin, which he then had in his possession, and partly in the further sum of thirteen thousand two hundred dollars of gold coin, which was then on board of the *Scylla*, and belonged to him; and in pursuance of such arrangement your petitioner, on the 30th of January, 1864, paid said sum of six thousand dollars in gold coin to Captain Routt, and the latter gave his receipt therefor in writing, as follows:

"Received, Matamoras, January 30, 1864, of C. W. Adams, six thousand dollars in gold, said gold to be applied in payment for cotton purchased by C. W. Adams, of Captain Brewster, A. D. C., of Major-General Herron's staff.

"JOHN L. ROUTT,
"Capt. and Chief Q. M. U. S. Forces on Rio Grande."

At the time of such payment Captain Routt exhibited to your petitioner an indorsement made by Major-General Herron on the original letter which your petitioner had written to Captain Routt, under date of January 29, 1864, confirming the making of such sale to your petitioner; and the market-price of such cotton at that time at Matamoras, supposing it to be of the average quality, was thirty-five cents in gold per pound, and the quantity embraced in such agreement to sell, estimating it according to the carrying capacity of the Scylla, was about 115,300 pounds. (Exhibits 1, 2, 3, 4, 7, 9.)

After the agreement had been made for the sale of said merchandise to Captain Routt, on behalf of the United States, and pending the negotiation for the sale of said cotton to your petitioner, and on or about the 24th January, 1864, a written permit, signed by Major-General Herron, in the following words, was delivered to him, namely:

“HEADQUARTERS U. S. FORCES ON RIO GRANDE,

“Brownsville, Texas, January 24, 1864.

“Permission is granted the brigantine Scylla, Captain Loud, master, to enter the harbor of Brazos de Santiago, to discharge the stores purchased by Captain Routt, A. Q. M., for the United States. She will also be permitted to remain in the harbor to reload, should there be any cotton or other property there to ship.

“F. J. HERRON,

“Major-General.”

Thereupon your petitioner, for the purpose of making delivery of the merchandise sold by him as above stated, ordered the Scylla to Brazos de Santiago, and she sailed accordingly for that port on the 26th January, 1864, and came to anchor off the bar, from which place she was, on the 28th January, towed into the harbor by the United States steamer General Banks; and there, on the 30th January, 1864, after the agreement for the purchase of said cargo of cotton had been made, and \$6,000 in gold paid to Captain Routt on account of it, as above stated, Colonel Hodge, commanding the United States troops at Brazos Santiago, boarded the Scylla with a party of soldiers, and forcibly seized and took possession of her and her entire cargo, including as well that portion of it which had not been sold to the United States as that portion which had been purchased by Captain Routt on behalf of the United States, as above stated; and also forcibly seized and took possession of all of her stores, and of the \$13,200 of gold coin belonging to your petitioner, which was then on board of the Scylla, and arrested and made prisoners of Francis D. Hamilton, the master, and William Y. Loud, the supercargo of said vessel, and also of the various persons constituting her crew; and on the same day your petitioner was also arrested at Brownsville, and held as a prisoner, by order of Major-General Herron. On the 1st February, 1864, your petitioner, together with the master and supercargo of the Scylla, was released on parole, and the crew were also released; but no part of the cargo or stores of the Scylla, nor of the \$6,000 in gold coin paid to Captain Routt, as above stated, nor of the \$13,200 in gold coin seized on board of the Scylla, was then, or at any time afterward, restored to your petitioner; but the same, and every part thereof, were retained by the military officers of the United States and converted to its use; nor was any portion of the cargo of cotton agreed to be sold to your petitioner, as above stated, ever delivered to him. (Exhibits 4, 6, 7, 9.)

Had the cotton agreed to be sold to your petitioner, as before related, been delivered to him, and shipped on board the Scylla under the permit of Major-General Herron, a copy of which is hereinbefore contained and referred to, it would have reached Boston (to which port the Scylla was bound) in time to have been sold during the month of June following, at which time the market-value of cotton, both in Boston and New York, was \$1.40 per pound; so that he would have received, say—

115,300 lbs. cotton, @ \$1.40.....	\$161,420
Less cost, @ 35 cts.....	40,355
	121,065
To which add amounts as follows:	
Paid Captain Routt in gold.....	\$6,000
Seized on board Scylla, gold.....	13,200
Cargo of Scylla.....	10,000
Estimated value of stores on board Scylla.....	2,500
	31,700
	152,765
Amount due Government, in gold, as above.....	40,355
Less amounts paid and seized, as above.....	31,700
	8,655
\$8,655 gold, @ \$1.60, is, in currency.....	13,484
	139 281

The balance, therefore, due your petitioner in currency, on June 15, 1864, the time the cotton would have been sold, was \$139,281, which was the amount of damages sustained by your petitioner by and in consequence of the before-mentioned proceedings of the military forces of the United States against him, irrespective of the additional damages sustained by him, as will hereafter appear, in respect of the Scylla, in consequence of her seizure.

The Scylla, at the time of her seizure, and during the proceedings hereinbefore mentioned, was held by your petitioner under a charter from Edward Mesnard, her registered owner, dated at London, September 19, 1863, by which she was chartered to your petitioner, (Exhibit No. 18,) and said charter contains, among others, the stipulation that your petitioner should, at his own expense, keep the said vessel tight, stanch, and strong, and that all expense of preserving her and keeping her in good repair and condition should be borne by him, your petitioner.

After the Scylla was seized, as above stated, she was sent by the military authorities of the United States to New Orleans, and it was not until May, 1865, after a detention of about two years and a half, that she was restored to your petitioner, (Exhibit 12,) and at the time of such restoration she was entirely dismantled of her sails and running-rigging, and had nothing on board of her but her masts and standing-rigging. Said masts, being rotten, had to be replaced when she was thoroughly repaired. Her hull had been greatly injured also, (Exhibit 10;) so that to have repaired her where she lay would have cost more than she would have been afterward worth; and in order to get her to a port where she might be more cheaply repaired, your petitioner fitted her out with second-hand sails and rigging, and put some temporary repairs on her at a cost of \$2,384.25, and had her cleared for the port of Saint John, New Brunswick, for permanent repairs. But on her voyage she became leaky and unsafe, (Exhibit No. 19,) and subsequently reached Bangor, Me., where she was permanently repaired at a cost of about \$6,000. In addition to these expenses, he was subjected to the loss of the use of the vessel for at least the period of two years and a half, viz, from January, 1864, (the time of her seizure,) until August, 1866, the time that she was thoroughly repaired after her restoration, and consequently the amount of damage sustained by him in respect of the Scylla, on account of her seizure, as aforesaid, was eighteen thousand three hundred and eighty-four dollars, according to the following statement, viz:

Temporary repairs in New Orleans.....	\$2,384 25
Amount of repairs in Bangor, about.....	6,000 00
Loss of the use of the vessel for two years and a half, at the rate of \$4,000 per annum	10,000 00
	18,384 25

The pretext for the seizure above mentioned is set forth in an official letter which Major-General Herron, on the 30th January, 1864, wrote to Brig. Gen. C. P. Stone, a copy of which is hereto annexed as Exhibit 4.

The letter from W. Marsh, United States consul at Altona, referred to in Major-General Herron's letter above set forth, so far as relates to your petitioner, is hereto annexed as Exhibit 5.

The charges against your petitioner, contained in the foregoing letters, are absolutely false. The W. Marsh, whose letter, above set forth, is the only authority upon which they were based, although the consul of the United States at Altona, at the time it was written, was a man of bad character, and in February last was convicted, at the quarter-sessions for the West Riding of Yorkshire, in England, of the crime of "fraudulently inducing a person to execute a valuable security," and was sentenced to be imprisoned at hard labor, in the house of correction for said West Riding, for the space of six calendar months, (Exhibit No. 13;) and although in his said letter he pretended that the charges which he made against your petitioner were based upon his own knowledge and observation, yet he has since acknowledged in writing, under his own hand, that they were based upon what was told to him by others. (Exhibit No. 20.) Upon whatsoever based, they had no foundation in truth.

Your petitioner never was an agent of the rebel government or a colleague of A. Dudley Mann, nor was he ever, in thought, word, or deed, a rebel against the Government of the United States; nor was he ever the agent or business-manager of said A. Dudley Mann, or associated or connected with him, directly or indirectly, in the purchase or shipment of arms or ammunition, or in any other business or matter whatsoever, at Hamburg or elsewhere.

Your petitioner never even saw said Mann, except casually twice in London, in 1861, and never communicated with him in writing or otherwise.

Your petitioner never, either in connection with said Mann or otherwise, before, during, or since the late rebellion, at Hamburg or elsewhere, purchased or shipped, or attempted to purchase or ship, any arms or ammunition, either to or for the rebel government, or to or for any other government, pretended government, State, or person. He was never engaged in running or attempting to run the blockade of any port blockaded by the forces of the United States; he never made or was connected, directly or indirectly, with any purchase

of arms in Bremen; and he never chartered or had any knowledge of any such vessel as the Amsterdam, Captain Benson.

He did employ in his mercantile business, for several years, the bark Alsterdamm, Captain H. Bendtsen, of Hamburg, but never during the time of such employment did this vessel carry any arms, ammunition, or other articles contraband of war, nor run, nor try to run, the blockade of any port blockaded by forces of the United States. She did sail from Bremerhafen at about the date of said Marsh's letter, but she went to Liverpool in ballast, and there took a cargo of salt, Dundee bagging, manila rope, and nails for Matamoras, where she arrived in January, 1863. Returning to Liverpool with a cargo of cotton, she took to Matamoras another cargo, consisting of salt, bagging, cotton-spinning machines, gambier cloth, rope, glass, putty, hardware, nails, drugs, cottons, woolens, and tea. (Exhibit 16.) The bark Herbert was not chartered for any such purpose, as was falsely alleged by said Marsh. On the contrary, that vessel, which was commanded by Captain William Y. Loud, of Orrington, Maine, who was subsequently supercargo of the Scylla, was, at or about the date of said Marsh's letter, at Rotterdam, in Holland, where she had arrived with a cargo of guano from the Chincha Islands, having taken a cargo of coal from Liverpool to Callao, and loaded with a return cargo of guano. Upon the discharge of her cargo of guano at Rotterdam, she sailed in ballast for Cardiff, Wales, where she loaded with coal for Havana, where the cargo was sold. At Havana the Herbert took in a small cargo of flour, sugar, bagging, and merchandise for Matamoras. The cargo included no arms, ammunition, or other articles contraband of war. It was discharged, and the vessel was loaded with cotton, which was landed at Liverpool in September, 1863.

The Herbert never carried any arms, ammunition, or other articles contraband of war while in the employment of your petitioner, nor to his knowledge at any other time. (Exhibits 9, 10.)

Your petitioner has never borne arms against the United States, has given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; has neither sought nor accepted, nor attempted to exercise, the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States, and has yielded no support to any pretended government, authority, power, or constitution hostile to the United States.

Your petitioner, therefore, respectfully submits that the bad faith which was exercised toward him by the officers of the United States, and the seizure of his property, as hereinbefore stated, were unwarrantable and unjust, and that the great loss and injury to which he was thereby subjected ought to be made good to him by the United States, and he prays that a bill might be passed granting him just and equitable relief and indemnity in the premises.

CHARLES W. ADAMS.

STATE OF NEW YORK,

City and County of New York, ss:

Charles W. Adams, the petitioner named in the foregoing petition, being duly sworn, saith that he has read the said petition subscribed by him, and knows the contents thereof, and that all of the statements therein contained are true to the knowledge of this deponent, with the single exception of the statement of the amount of repairs of the Scylla, in Bangor, on page 5 of said petition as printed, and as to that statement this deponent saith that he is unable, from his own knowledge, to specify the precise amount of such repairs, for the reason that such repairs were not made under the immediate personal supervision of this deponent, and the voucher therefor is lost, and the person who made said repairs is dead.

C. W. ADAMS.

Subscribed and sworn to before me this 2d day of January, 1874, as witness my hand and notarial seal.

[L. S.]

PRESCOTT HALL BUTLER,

Notary Public, New York County.

While the amount claimed is large, and the case made is apparently imposing, the whole matter may be disposed of with a brevity usually, if not always, commendable in these reports.

1. As to the item for gold, \$13,200, it appears that one Mesnard was the owner of the vessel, and by written agreement chartered the same to petitioner, with all contents, for two years from and after September 29, 1863. It also appears that, on the 11th of May, 1866, the said Mesnard, by the judgment of the United States district court for the district of Louisiana, obtained an order for the restoration to him of said vessel, together "with her tackle, apparel, and cargo, and \$13,200 in gold, as the lawful owner, leaving the question of damages untouched."

With that judgment unreversed, its validity in no manner questioned, and no suggestion, even, that it does not bind petitioner as well as the United States, it could hardly be expected that we should allow him any part of the \$13,000 in gold alleged to have been seized with the vessel.

2. Four-fifths of the claim is made up of the difference between the value of certain cotton in Boston and New York—points to which petitioner says he expected to take it—and the price which he alleges he was to pay for it, or the difference between 35 cents and \$1.40 per pound on 115,300 pounds, equal to \$121,065.

This item is denied on several grounds. Three at least may be mentioned:

First. There is no evidence that petitioner ever contracted for that amount of cotton, nor, indeed, that he had any contract for any specific number of pounds. The whole matter rested in negotiations at the time of the alleged seizure.

Second. What was the value of cotton at the place of alleged sale or purchase does not appear, nor yet what petitioner was to pay for it. Both these facts are material upon the question of profits, and especially when we say, in the

Third place, that the price or value in Boston or New York would not be the measure of damages. This is too speculative, and particularly so as all mention is omitted of the cost of transporting the cotton to, or what it was worth at one or either of those ports. In this state of the record petitioner might as well claim what it would be worth after being manufactured into cloth, or put to other use, however profitable. There is no evidence of actual loss.

3. Ten thousand dollars is claimed for "loss of the use of the vessel two and a half years, at \$4,000 per annum." The seizure was made January 30, 1864, or four months after the "charter contract" of September 29, 1863. Petitioner's use of the vessel only continued for twenty months after the seizure, and thus one-third of the time claimed, and of the amount also, (\$3,333,) is out of the way. Then, so far as evidence is of value, he might as well claim double or thrice this sum as that stated, for there is as much to warrant the one as the other. Not only so, but as we have seen by the judgment of the court in the admiralty proceeding, the owner (Mesnard) is claiming damages, and this question was left "untouched." Safety would demand that we should be put into possession of the result of that adjudication, or at least know something more of its scope and purpose than this record discloses, before awarding petitioner anything upon this ground.

4. But finally, as to the items thus hurriedly alluded to, and all others, there remains the significant fact that petitioner does not rebut or disprove the lawfulness of the seizure. It is undenied that the vessel was seized under a proper military order. Petitioner was negotiating with the quartermaster (Routt) for about ten days or more, commencing near the 20th of January, 1864. On the 6th of November, 1862, Marsh, our consul at Altona, advised Mr. Seward that Adams was the agent and business-man of Dudley Mann, and that their mission was to furnish arms, ammunition, &c., to the rebel government. On the 30th of January, 1864, Major-General Herron, commanding the forces on the Rio Grande, writes to General Banks, commanding the Department of the Gulf, that he had received from Mr. Pierce, our consul at Matamoras, two letters, one from Marsh and one from the Secretary of State, (Mr. Seward,) relating to the operations of Mr. Adams, an agent of the rebel government and colleague of A. Dudley Mann. Just at this time Mr. Adams proposed to sell the stores re-

ferred to in his petition, and as General Herron says in his letter, learning that he was the same person referred to in those letters, he directed Captain Rountt (in substance) to so negotiate with him as to effect a seizure. This was accomplished, as already stated. The letter of General Herron very fully sets out the facts upon which he acted, and, if true, there can remain no semblance of doubt that his order was well warranted. After this, on the 12th day of February, 1864, General Banks advised Mr. Seward of the seizure, inclosing letters from General Herron, and that he had advised General Herron to hold the vessel and cargo until action could be taken at Washington.

Now, aside from petitioner's statement, there is but little, if anything, to rebut or disprove the facts before the officers, at the time they acted. The burden of proof is upon the petitioner, as there was at least a *prima facie* case against him, to show that the seizure was unlawful. Of course, if he was a blockade-runner, or if he was using his vessel in aid of the rebellion, he can have no such status before the committee or the Senate as would entitle him to relief. And referring to the notable fact that he furnishes next to no evidence of his loyalty, that his loss was sustained in 1864, and that he failed, without excuse, so far as we can see, to make claim therefor for about nine years thereafter, we feel well justified in asking to be discharged from the further consideration of his petition, and that this report, denying said claim, be adopted.



IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

The Committee on Claims, to whom was referred the petition of Alexander Kennedy, of Blount County, Tennessee, praying compensation for ten bales of cotton, submit the following report :

From the memorial and affidavits, it appears that the petitioner was the owner of ten bales of cotton, averaging 500 pounds weight each which were stored in Knoxville at the time that city was besieged by the rebel forces under General Longstreet, in the month of November, 1863. This cotton was seized by command of General Burnside and placed in the fortifications of the city, where it did good service in resisting the assault upon the works by the enemy. In most of its features this case is like that of Cowan & Dickerson, upon which this committee submitted a report, No. 98, at the present session, and in that report Mr. Kennedy's case is referred to.

On the 10th of January, 1864, W. G. Brownlow, Assistant Special Agent of the Treasury Department, gave a certificate that Mr. Kennedy had ten bales of cotton on the fortifications of Fort Saunders, and the guards were ordered to allow him the privilege of hunting them out. This order was approved by Brigadier-General Tillson, commanding the defences, but the petitioner alleges that he was refused permission by the officers in charge to take possession.

Afterward, on the 26th day of February, 1864, Special Order No. 57 was issued from the headquarters of the department, directing the chief quartermaster of the department to proceed to collect all cotton that had been used in the construction of fortifications and for other purposes in the vicinity of Knoxville not absolutely necessary for the public service, and to ship the same to Louisville, to be turned over to the chief quartermaster there, to be disposed of for the benefit of the Government, according to existing regulations.

It is alleged that, in pursuance of this order, some of this cotton was shipped to Louisville, and the balance piled up near the railroad depot at Knoxville ready for shipment, and while so piled up and in charge of the officers of the Government, was destroyed by fire by the carelessness of two boys smoking near by. But no evidence has been submitted that any portion of the cotton in question was shipped as alleged, and the committee are indebted for the evidence as to the manner of the destruction of the cotton, to the proofs submitted in the Cowan Dickerson case. We think it proper to refer to the evidence in

that case, for this cotton was taken and used for the same reason as in theirs, and at the same time.

The affidavits filed in the present case have reference principally to the price of cotton, and the loyalty of the petitioner.

First. As to the price.

John F. Price says that in the fall of 1863, the ensuing winter, spring, and summer, he dealt extensively in cotton, and handled a great many bales. He fixes the value at the time this cotton was seized at \$1.25 per pound. It ran down to \$1.12½ in the summer of 1864.

A. Kennedy, jr., a son of the petitioner, says that, in June, 1864, cotton was quoted in New York at \$1.50 per pound, and was worth at that time in Knoxville \$1.12½ to \$1.25 per pound, and at the time the cotton was taken by the Union Army it was worth \$1.25.

Second. As to the loyalty of the petitioner, three witnesses speak to that question.

The first is James Rodgers, the postmaster at Knoxville. He swears that during the whole war Kennedy was an unconditional Union man, loyal to the Government of the United States; that he had frequent conversations with him upon the topics of the Union and its armies; and that Kennedy at all times expressed himself and acted as friendly to the cause of the Union. These conversations were had at the witness's house, where the petitioner frequently stopped and staid all night. He also swears to having been informed of Kennedy's cruel treatment by a portion of Longstreet's army, upon its advance against Knoxville, on account of his known Union sentiments; of his detention by the rebels; of his release and escape to Knoxville, where he remained until after the seige was raised, and the witness expresses his confidence in the information, and his belief in its truth. He further states that Kennedy maintained his Union sentiments even when the rebel army had control in East Tennessee, and when the expression of such sentiments was attended with danger.

To the same effect is the testimony of James M. Foote, whose acquaintance with the petitioner dates back for forty years. He also refers to the arrest of Kennedy by a part of the rebel army, when on the march to Knoxville, and his rude and abusive treatment by them; how they called him "a damned Lincolnite," and threatened to hang him on account of his Union sentiments, and how he, the witness, interceded in his behalf and secured his release, by Kennedy's giving a bond, the purport of which he does not give.

The strongest evidence on the point of loyalty proceeds from J. W. French, who was a soldier in the Union Army, and is indorsed by Senator Brownlow, as a loyal and reliable man. He testifies to twelve years' acquaintance with Kennedy; to his loyalty; to his having assisted in raising a company of home guards to assist the Union cause, and avows that he never heard his loyalty drawn in question. He also speaks of the rumor of Kennedy's arrest and maltreatment by the rebels, on account of his Union sentiments.

Here, then, we find three men, two of them of undoubted loyalty, indorsing Mr. Kennedy's loyalty in strong terms.

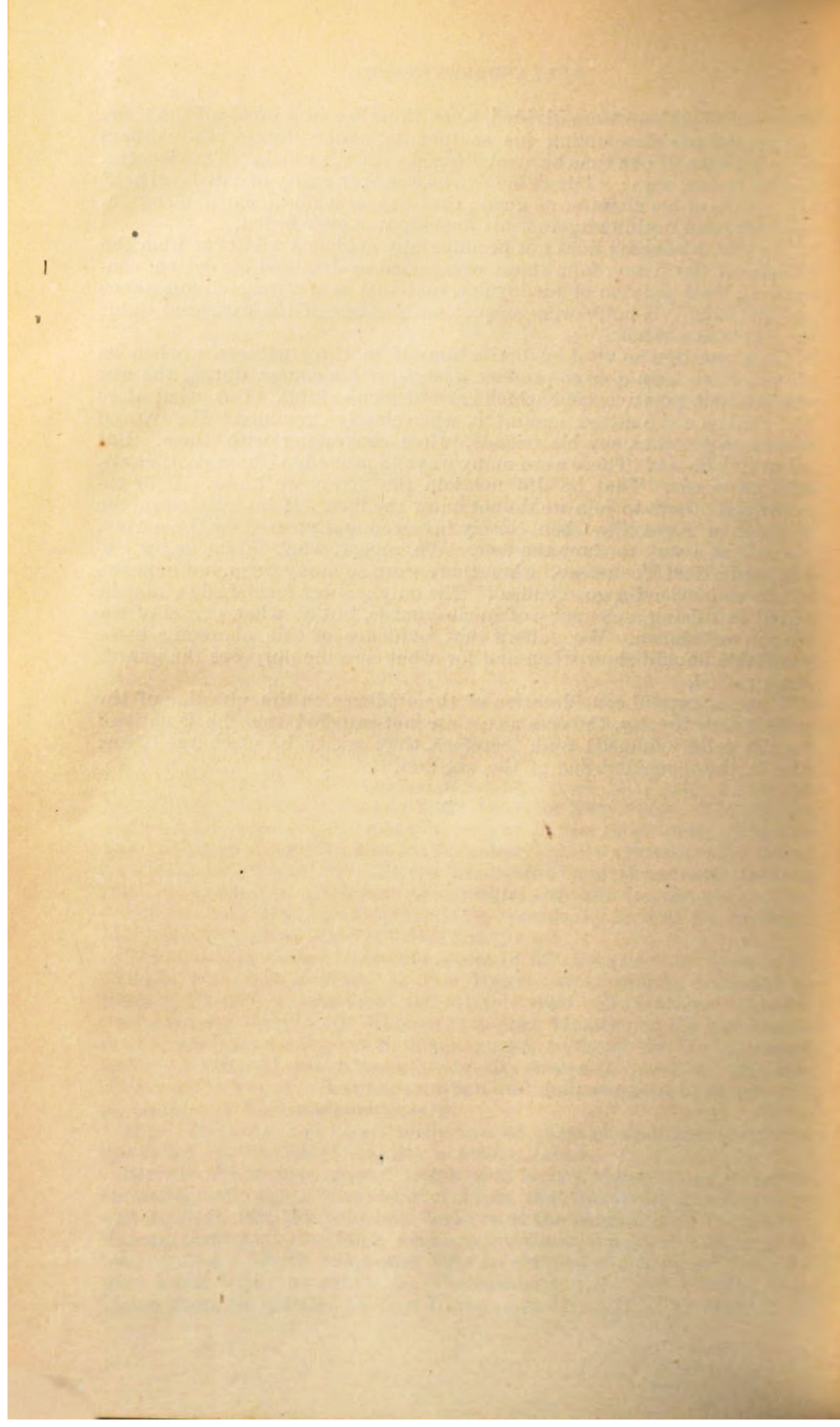
Senator Brownlow says of Foote, that he is a man of good personal character, but was a rebel; and of Price, that his understanding is he was disloyal. Of the petitioner he says, at the beginning of the war he was unconditionally a Union man. After that, he says of him, that he was doubted by both sides, and that he claimed to belong to both parties; when with the rebels, he sympathized with them; when with Union men, he claimed to be a Union man himself. The opinions of

his loyal neighbors were divided, some thinking him loyal all the time, but sometimes dissembling his sentiments, under duress, while others thought that at one time he sympathized with the rebels. The Senator, in conclusion, says: "I don't believe he was ever guilty of a disloyal act." He speaks of his character as good; that he was a moral man and church member, and nothing against his honesty was ever heard.

He (Mr. Kennedy) does not produce any evidence whatever from the officers of the Army, from those who seized or detained his cotton, concerning their opinion of his loyalty, and this is a strong circumstance against him. It is likewise suspicious that one of the witnesses to his loyalty was a rebel.

On a question so vital he limits himself to three witnesses, when he should have been able to produce a score, if his course during the war was of that positive kind which earnest men exhibit. But what does the evidence submitted amount to, when closely examined? He avowed Union sentiments, say his friends, when conversing with them. But what did he do? There were many ways to prove his Union sentiments, besides words. That he did not join the Army we know. If he encouraged others to join we do not know the fact. If he assisted in the defence of Knoxville when closely invested and pressed by the enemy, there was a way to show the fact. We repeat, what did he *do* for Unionism in East Tennessee, when there were so many ways and opportunities to befriend a good cause? The only answer furnished is that he aided in raising a company of home guards, but at what period of the war is not shown. We submit that evidence of this character to be available should show when and for what specific purposes the guards were raised.

Upon a careful consideration of the evidence on the question of the petitioner's loyalty, the committee are not satisfied that he is entitled to the relief claimed; and, therefore, they ask to be discharged from the further consideration of the petition.



IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1874.—Considered, agreed to, and ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Isaac A. Morris, praying compensation for machinery sold by United States officers at Van Buren, Ark., have considered the same, and submit this report :

The petitioner alleges that he was the original owner of two sixty horse-power steam-engines, and of what he calls in his very unartistically-drawn petition, "various pieces of cotton-machinery, also of wooling," which were saved and stored after the burning of the cotton-factory at Van Buren, in the year 1862; the said factory being owned at the time by Pennington & Morris, as equal partners; and Morris having purchased Pennington's interest in December, 1862, for \$5,000. He states that after the fire he had stored it at Van Buren until times would "become so that he could do something with it;" that in the spring of 1864, after the United States authorities took possession of Fort Smith and Van Buren, "the property was sold by one Stockton, United States revenue officer." The only account given of the sale is, "that petitioner presumes that said property was sold as abandoned property, as said petitioner was not there and had no agent there, and when said petitioner returned there after the war said property was gone."

The only evidence submitted to sustain the claim consists of the petitioner's oath to the truth of his petition; the affidavit of Caleb Cox, who says that he was at Fort Smith at the time the property was sold, in 1864, as a member of the Thirteenth Regiment Kansas Volunteers; of A. M. White, who says he was hired to attend a grist steam-mill at Van Buren, Ark., by Isaac A. Morris, in October, 1862, and that "said mill, engines, and machinery was known as belonging to said Morris;" of John W. Pirte, who says he "hailed flour to Van Buren, Ark., in the year 1862, and sold to Isaac A. Morris, who was then running the cotton and wool factories at Van Buren, and was known and recognized as the owner of said machinery," &c., and of two witnesses to Mr. Morris's loyalty and identity.

No account is given of the custody of the machinery from 1862 till 1864; of how much of it then remained, in what condition it was, or of its real value; no account of the sale by any one who knew why it was made, or of the price the property sold for; no statement as to whether the proceeds went into the Treasury; indeed the whole case rests upon an inference that it was sold, because it was there in 1862 and was not there in 1864, when the owner returned to ask for it. The case is not a

good one upon the petitioner's own presentation of it, and the evidence submitted makes it no stronger.

The claim ought not to be allowed, and the committee ask that this report may be adopted, and they discharged from the further consideration of the case.

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REPORT:

The Committee on Claims to whom was referred the petition of Isaac A. Morris, praying compensation for machinery sold by United States officers at Van Buren, Ark., have considered the same, and submit this report:

The petitioner alleges that he was the original owner of two six-horse-power steam-engines, and of what he calls in his very numerous affidavits "various pieces of cotton-machinery, also of machinery," which were saved and stored after the burning of the cotton-factory at Van Buren, in the year 1862; the said factory being owned at the time by Farrington & Morris, an equal partnership; and Morris having purchased Farrington's interest in December, 1862, for \$5,000. He states that after this he had stored it at Van Buren until times would "become so that he could do something with it"; that in the spring of 1864, after the United States authorities took possession of Fort Smith and Van Buren, "the property was sold by one Stockton, United States revenue officer." The only account given of the sale is, "that petitioner procures that said property was sold as abandoned property, as said petitioner was not the owner and no agent there, and when said petitioner returned there after the war said property was gone."

The only evidence submitted to sustain the claim consists of the petitioner's oath to the truth of his petition; the affidavit of Caleb Cox, who says that he was at Fort Smith at the time the property was sold, in 1864, as a member of the Thirtieth Regiment Kansas Volunteers; of A. M. White, who says he was hired to attend a great steam-mill at Van Buren, Ark., by Isaac A. Morris in October, 1862, and that "said mill, engines and machinery was known as belonging to said Morris"; of John W. Price, who says he "hauled four to Van Buren, Ark., in the year 1862, and sold to Isaac A. Morris, who was then running the cotton and wool factories at Van Buren, and was known and recognized as the owner of said machinery," &c., and of two witnesses to the Morris' loyalty and identity.

No account is given of the custody of the machinery from 1862 till 1864; of how much of it then remained, in what condition it was, or of its real value; no account of the sale by any one who knew why it was needed, or of the price the property sold for; no statement as to whether the proceeds went into the Treasury; indeed the whole case rests upon the inference that it was sold, because it was there in 1862 and was not there in 1864, when the owner returned to ask for it. The case is not a

IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1874.—Considered, agreed to, and ordered to be printed.

Mr. BOREMAN submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of William B. Matchett, praying for relief on account of injustice alleged to have been done him by improperly striking his name from the rolls as a clerk in the Treasury Department on the 26th day of January, 1866, have had the same under consideration, and respectfully submit the following report :

The committee are not able to see anything in the petition or accompanying papers that would authorize the granting to the petitioner of relief of any character whatever.

The papers seem to suggest the idea that he lost his position as clerk because he would not participate in, or cover up, some sort of malfeasance in the Bureau in which he was employed; yet the whole matter is so vague and indefinite that the committee can make nothing out of it in the way of a claim on behalf of petitioner against the Government.

Lest they do him injustice, however, they here copy the only papers in the case that can shed any light whatever on the petitioner's pretensions, viz, the petition, in the following language :

On the 6th day of June, 1865, your petitioner was appointed a clerk of the first class in the Treasury Department, and on the 26th of July following was, without his solicitation, promoted to a clerkship of the second class; that on the 26th of January, 1866, following, his name was improperly stricken from the rolls of said Department; and although he has frequently requested it to be replaced thereon, it has been declined. He therefore prays such action by your honorable bodies as shall give him the relief to which he is justly entitled.

A letter dated January 18, 1866, directed to Hon. John Wilson, Third Auditor, in whose Bureau petitioner was employed as clerk, in the following language :

SIR: Since the doings of yesterday I am still more of the opinion I expressed on my return from New York on Monday last, namely, of retiring from the Department. At any rate, I shall withdraw myself for the present, at least, and shall not, therefore, place myself in the position which you require, with regard to certain investigations said to be going on in your Department with respect to alleged malfeasance in office of certain officers in Government employ. When this whole matter is called for before a proper tribunal I will give my testimony under oath. Till then I must respectfully, but positively, decline.

I am, sir, respectfully,

W. B. MATCHETT,
Third Auditor's Office.

A letter of same date to Hon. Hugh McCulloch, Secretary of the Treasury, in the following language :

SIR: The undersigned respectfully requests that a board be appointed to investigate certain charges of malfeasance in office of certain officers in the Third Auditor's Office ;

said board to consist of the Assistant Secretary, Hon. William E. Chandler, the chief clerk of the Third Auditor's Office, Mr. Gangewer, and such other persons as your honor may select.

I am, very respectfully, your obedient servant,

REV. W. B. MATCHETT,
Clerk in Third Auditor's Office.

Hon. HUGH McCULLOCH,
Secretary of the Treasury.

On January 26, 1866, the Secretary addressed petitioner a communication in the following language:

TREASURY DEPARTMENT, *January 26, 1866.*

SIR: Your letter of the 18th instant to the Third Auditor of the Treasury is considered to be your resignation as a clerk in that Office; and, in consideration of the unpleasant feeling produced among the employés of that Bureau by your charge of malfeasance, the same is accepted, to take effect the 17th instant, the day you voluntarily ceased to perform the duties of your desk.

The Department cannot investigate or take notice of vague rumors of malfeasance of officers.

When your charges shall be made specifically, giving the names of parties alleged to have committed offenses, together with the facts, substantiated by oath, the Department will consider the expediency of a further investigation.

I am, respectfully,

H. McCULLOCH,
Secretary of the Treasury.

Rev. W. B. MATCHETT,
Washington, D. C.

And thus the petitioner's connection with the Department ended. He subsequently applied to Secretary McCulloch to be re-instated, by letter dated September 3, 1866, but the Secretary declined to do so. He also, in March, 1869, applied to Secretary Boutwell to be re-instated, but it would seem that he again failed of success. He now comes to Congress claiming relief. There is nothing in the papers to show what relief petitioner contemplates, except a resolution filed with the petition, which it would seem he expected the committee would report favorably, appropriating enough money out of the Treasury to pay him as a second-class clerk from June 26, 1866, to November 26, 1872.

It may be, as suggested from reading the papers, that the petitioner felt it to be incumbent on him to withdraw from his duties as a clerk rather than wink at wrong-doing; and this is commendable; but the Secretary having treated the communication of petitioner to the Third Auditor as a resignation, and so informed him, and thus severed his tenure of office, and he having received his pay up to that date, and not having performed any services afterward, there can be no obligation on the Government to pay him anything whatever, however meritorious or commendable his conduct may have been which led to the termination of his official relations to the Department.

The committee therefore report back the petition referred to them as foresaid, being of the opinion that the petitioner is not entitled to relief, and ask to be discharged from the further consideration thereof.

IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1874.—Ordered to be printed.

Mr. SARGENT submitted the following

REPORT:

The Committee on Naval Affairs, to whom was referred the memorial of certain surgeons of the United States Navy, asking for the re-arrangement of the dates of their commissions, have had the same under consideration, and beg leave to submit the following report:

That the memorialists are surgeons in the Navy, and were appointed in 1861, taking their place on the naval list in the grade of assistant surgeons, according to a role of merit, made up by the examining board and approved by the Hon. Secretary of the Navy.

They remained in this position for four years, when those who were subsequently appointed in the year 1862 were classified with them, for the purpose of a competitive examination before a board of officers, convened in accordance with the laws and regulations of the Navy Department, for the purpose of ascertaining the qualifications of petitioners for promotion to their present grade. The original commissions of both parties are dated in 1862. It is alleged that this "amalgamation" of appointees for the years 1861 and 1862 for examination was without precedent in the service, and resulted in great injustice to these parties; considered by them of such magnitude as to demand legislation in their favor at the hands of Congress.

It is not suggested, however, that any wrong was perpetrated by the decision of the board, or that the examination was not conducted with fairness and impartiality. But the supposed injustice appears to be in the act of allowing those gentlemen who had not been in the service as long by one or two years as the petitioners the privilege of participating in a competitive examination for advancement in their profession. They all joined in the examination, and must have understood, from its nature and object, that those who showed themselves the most proficient would be first advanced. The prior advancement of those best qualified would certainly best subserve the interests of the public service. As might be supposed, some of these memorialists failed, and were obliged to await future action of the board; but they have finally all been promoted, the last having been commissioned as surgeon January 8, 1873. They naturally said nothing of their grievances until December, 1873. It was evident, if their petition had met with favor, it would have become necessary to have vacated the commissions of those who, by reason of superior qualifications, had been promoted over them. But after they had all been promoted to the rank of surgeon, the proposition to re-arrange their names according to the dates of first appointments appeared more feasible.

The papers in the case were referred by the Secretary to the Bureau of Medicine and Surgery for examination and report, and the following letter from Surgeon General Beale shows the conclusions arrived at. On the 12th of January last a copy was forwarded to the memorialists informing them that it had the approval of the Department:

NAVY DEPARTMENT,
BUREAU OF MEDICINE AND SURGERY,
January 8, 1874.

SIR: Having considered the memorial of certain surgeons in the Navy transmitted to the Hon. Secretary of the Navy by Surgeon C. J. S. Wells, one of the memorialists, (in a letter dated December 26, 1873,) and by the Department referred to this Bureau for examination, I have the honor to submit the following report: The facts in the case are these: Surgeon Wells and the other signers of the memorial were found qualified for admission into the Navy as assistant surgeons by a board which convened in June, 1861, and were all assigned to active duty before the expiration of that year. For some reason not ascertained, but probably owing to public emergencies, they were not commissioned until the 24th January, 1862. In March, 1862, a board differently constituted was assembled to examine a number of other candidates for admission as assistant surgeons. Such of these as proved to be qualified were commissioned during the same year, (1862,) and took position on the register below all of the date which had passed in 1861. This relative position of the dates continued until 1865, when both dates were ordered for their second examination before one and the same board. As the members of both dates bore commissions issuing in 1862, the board treated them as one date, and after a competitive examination classified them anew in the order of merit. The result was that changes of place between members of the two dates occurred, and subsequent vacancies in the grade of surgeons have been filled in accordance with the new positions thus assigned. All of both dates are now surgeons.

It is of this amalgamation of their date with one junior to it, and of the consequences thence resulting, that the memorialists now complain. They show that their promotions have been retarded by it from seven to twenty-two months, and correctly state that they will labor under a similar disadvantage in all future promotions. To remedy the great injustice which they claim has been done them, they ask that the two dates may be again separated, and their relative positions so re-arranged that the junior surgeon of their date may take rank above the senior surgeon of that of 1862.

Looking at the question in conformity to equity, as well as the usages of the service, I have no hesitation in saying that the two dates should have been kept distinct at their second examination. Their consolidation into one date has undoubtedly done serious injustice to that of 1861, some of whose members were on duty nearly a year before that of 1862 was examined. While, however, usage would have kept them distinct, I am unable, after the most careful research, to discover any provision of law requiring it to be done. Hence, I cannot consider the merging of the dates in one as illegal, or that in doing it the Department transcended its just powers.

Admitting, however, the complaint of the memorialists to be as well founded as they assume it to be, I conceive the Department is powerless to apply a remedy.

Commissions as surgeons, dated in different months or years, and approved by the Senate, have been conferred on the members of both dates, and their relative positions have been thus defined with the highest sanction of law, against which no mere regulation would be of the least avail. Thus, whatever irregularity may have crept into their arrangement by the board as passed assistant surgeons, is fully condoned by the action of the Senate since, in confirming them as surgeons; and the positions, so determined, must remain until changed by the same authority which originally assigned them.

I am, therefore, of opinion that the request of Dr. Wells and other surgeons of the memorial should not be granted.

Very respectfully, your obedient servant,

J. BEALE,
Chief of Bureau

The statutes bearing upon the matter are as follows:

All appointments in the medical corps shall be made by the President, by and with the advice and consent of the Senate. (Act 21st April, 1806; 16th of April, 1814; 24th May, 1828.)

No person shall be appointed assistant surgeon until he has been examined and approved by a board of naval surgeons, designated by the Secretary of the Navy, nor who is under twenty-one or over twenty-six years of age. (Acts 24th May, 1828; 3d of March, 1871.)

No person shall be appointed surgeon until he has served as an assistant surgeon at least two years on board a public vessel of the United States at sea, nor until he has been examined and approved for such appointment by a board of naval surgeons designated by the Secretary of the Navy. (Act May 24, 1823.)

In the latter part of 1865 the petitioners under the act last cited were ordered before the examining board. The committee are unable to see any injustice that was done them by allowing other gentlemen, equally entitled, to compete with them for promotion. It is true their competitors had not been in the service as long; but they passed a much better examination, and were consequently entitled to such meritorious position among their associates as was afterward awarded.

The suggestion that the act of the Secretary was illegal and arbitrary is not warranted by his action in the premises. In the absence of legislative enactment prescribing rules for examinations incident to promotion, the usages and customs of the Department should be changed when in the opinion of the Secretary the interests of the service will be promoted thereby.

All the competitors, having complied with the requirements of the law as to service, were equally entitled to go before the board. The committee are of the opinion that the only proper course was adopted by the Secretary, in subjecting these appointees of both dates to a competitive examination, thereby giving them their present numbers on the naval list according to their individual merit. If it is right now to change the numbers, it was right before to vacate the commissions conferred by the sanction of the Senate. But we are of the opinion that to do so would be a gross injustice to those advanced on the list. To make such changes without the recommendation of the Department must be attended with great confusion, and result in injury to the service.

These memorialists should occupy the same relative position they have had since the competitive examination, for the same disparity in professional learning may exist now as shown then. No one should feel wronged at having a superior placed over him in the service, but would have reason to complain if the converse was the rule.

The committee recommend that the further consideration of the memorial be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1874.—Ordered to be printed.

Mr. CONOVER submitted the following

REPORT:

[To accompany bill S. 134.]

The Committee on Naval Affairs, to whom was referred the bill (S. 134) for the relief of Daniel S. Mershon, jr., have had the same under consideration, and submit the following report:

The claimant sets forth in his memorial that he is a resident of Bordentown, New Jersey, and claims that he has been greatly injured by the Government, owing to a violation of the terms of a contract entered into with the Navy Department, on the 12th day of October, 1861, for the construction of the side-wheel steamer Cimaron, involving a loss to him of \$46,715.08.

It appears from the evidence submitted, that on the 8th day of August, 1861, the Navy Department published proposals for the construction of twelve side-wheel steamers, requiring bidders to furnish their own specifications, and thereupon the claimant made a proposition to the Department to build one of them for \$120,000, which bid was rejected by the Department. On the 19th of September, 1861, he received a communication from the Navy Department proposing that he should build a vessel for \$100,000, corresponding to the steamer Miami, then being built at the Philadelphia navy-yard, to which he replied as follows:

BORDENTOWN, September 21, 1861.

DEAR SIR: In answer to yours of the 19th instant, I have to say that I will build for the United States Government a side-wheel steamer for the sum of one hundred thousand dollars, to be the same size and dimensions as one you refer me to in Philadelphia navy-yard, to be completed in 110 days from date of contract. I wish further to state that the material and workmanship shall be equal to that which is being placed on the vessel now being built for the United States Government at the navy-yard in Philadelphia.

Respectfully yours, &c.,

D. S. MERSHON.

JOHN LENTHALL, Esq.,
Chief of the Bureau of Construction.

On the 30th day of September, 1861, as will appear from the following letter, the Navy Department accepted his offer without modification, viz:

NAVY DEPARTMENT,
BUREAU OF CONSTRUCTION, &c.,
September 30, 1861.

SIR: I am instructed by the Navy Department to notify you that your offer of the 21st for construction of a side-wheel steamer in conformity with the advertisement of the 8th August, for the sum of \$100,000, will be accepted, with the understanding

that all the conditions of the advertisement are to be included in the contract, and that any deficiency in the specifications as to the material or workmanship for hull, equipment, or machinery shall be made satisfactory to the Department in every respect, and shall be made to conform as far as practicable to the side-wheel steamer building in the yard nearest to you.

The displacement of the vessel to be not less than 30,600 cubic feet; but if you think it should be greater to insure the draught of water to 6 feet 9 inches, *you can increase it and your dimensions*, but the proportion of the displacement must not, in any case, be more than two-thirds of the circumscribing solid of the length of the water-line, the extreme breadth, and draught of water exclusive of the keel.

The contract will embody clauses for forfeiture for failure to fulfill the conditions of the draught of water, and the forfeiture on completion to be \$200 for each twenty-four hours after the expiration of the contract time.

You will reply to this by return of mail, and the date of the contract will be two days after the notifications from this Bureau.

Respectfully, your obedient servant,

JOHN LENTHALL,
Chief of the Bureau.

DANIEL S. MERSHON, Esq.,
Bordentown, N. J.

It therefore appears that the contract was to be based upon the proposition as made by the claimant, and the conditions as embraced in the above letter, viz, that the vessel to be built by him was to conform, as far as practicable, with the side-wheel vessel (the Miami) then being built at Philadelphia; that he, the claimant, was to furnish his own specifications, and further to use his own discretion looking to an increased displacement of the vessel.

Upon the receipt of this acceptance of his offer by the Department, it appears that the claimant at once made his arrangements to construct the vessel, understanding that he was to prepare his own specifications, and incurred great expense in the purchase of material for the construction of the vessel. Upon the receipt of the contract for execution he found that the Department had also forwarded specifications, and from an examination discovered that they were in conflict with the advertisement and letter of acceptance by the Department. For the reasons assigned by the claimant in his memorial, he was induced to sign the contract, which was executed on the 12th of October, 1861.

Your committee, while admitting that the claimant may have been misled by the instructions of the Department, cannot recognize the fact that he has any claim upon the Government for losses sustained by him subsequent to the acceptance of his bid, and prior to the signing of the contract. The latter was his voluntary act, and if losses accrued to him in conforming to it, he alone is responsible. On the other hand, if there should be a violation of the terms of the contract on the part of the Government in requiring a modification of the plan of the vessel in length, width, or capacity, or increased size and weight of machinery, after the contract was signed and accepted, which resulted in increased cost and consequent heavy loss to the contractor, then the Government is responsible.

It appears from the facts submitted that a short time after said contract was executed, the Miami (after which the Cimaron was to be built) was launched, and it was ascertained that she was deficient in strength by reason of too light timbers in the hull, and consequently so weak that she could not bear the machinery. The bottom of the Cimaron had to be built nearly anew of heavier timber, double the quantity, the floors closely laid, the stanchions supported by knee-timber both top and bottom, and many other alterations and additions from the original plans and specifications were ordered by the Department, causing not only delay in the completion, but subjecting the claimant to great expense and pecuniary hardships.

The hull by contract was to correspond in size to that of the Miami, but the plans were so changed, after the contract was made, as to increase the length of the Cimaron 16 feet 6 inches, her breadth 2 feet 10 inches, and 8 inches increased depth, as also an increase of 130 tons in capacity over that of the Miami, and which changes were made by the Department after the contract was entered into by the claimant. By the change of the dimensions of the vessel, as stated, the increased tonnage at \$125 per ton, (a low price for the hull of a ship built during the war, when labor and material were at an advanced price and our national currency depreciated,) it subjected the claimant to an increased cost of \$16,250.

The alteration on the hull, including the floors, the extra amount of timber necessary to strengthen the bottom, amount to \$4,204.58.

The extra labor for pattern-makers, boiler-makers, machinists, and blacksmiths, at \$3.25 per day, for 2,131 days, the time necessarily employed as shown by the time-book to make these alterations, amounts to \$6,924.42.

As the Miami was the model in the construction of the Cimaron, the following statement will show the difference in weight of machinery, with cost of same at the time it was used and the vessel completed:

Parts.	Cimaron.	Miami.	Difference.	Cost.	Total.
	<i>Pounds.</i>	<i>Pounds.</i>	<i>Pounds.</i>		
Boilers	123, 280	100, 780	22, 500	\$0 15	\$3, 375 00
Smoke-stack	8, 487	6, 237	2, 250	12	270 00
Coal-bunkers	34, 792	24, 422	10, 550	10	1, 055 00
Water-wheels	41, 968	39, 978	1, 990	16	318 00
Iron castings	182, 788	117, 838	64, 950	04	2, 598 00
Brass castings	38, 684	16, 744	21, 940	38	8, 337 20
Forgings	70, 355	47, 805	22, 550	15	3, 382 50

Making a cost on machinery over and above that of the Miami of \$19,336.10, and a total cost over and above that of the Miami of \$64,715.10.

In support of the foregoing facts as to the increased length, breadth, tonnage, and weight of machinery of the Cimaron, and consequent violation of the terms of the contract by the Government, reference is made to the following letters from the Navy Department:

NAVY DEPARTMENT,
BUREAU OF CONSTRUCTION AND REPAIR,
Washington, February 11, 1874.

SIR: In reply to your request to be furnished with the dimensions of the United States steamer Miami and the United States steamer Cimaron, the former built at the United States navy-yard, Philadelphia, and the latter by D. S. Mershon, jr., of New Jersey, for the Government, I have to state that the following are the dimensions of the Miami:

Length between perpendiculars, 202 feet 6 inches; greatest breadth, 33 feet 2 inches; depth, 11 feet 2 inches.

Dimensions of the Cimaron are:

Length between perpendiculars, 219 feet; greatest breadth, 36 feet; depth, 11 feet 10 inches. Tonnage of Miami, 730 tons. Tonnage of Cimaron, 860 tons.

The Cimaron is consequently 130 tons larger than the Miami. It seems that the plans, as well as the specifications, were furnished by the Department, and that the size of the Cimaron was increased, after the contract was made, to the dimensions stated.

Very respectfully, your obedient servant,

I. HANSCOM,
Chief of Bureau.

HON. JOHN H. BURLEIGH,
House of Representatives.

NAVY DEPARTMENT,
BUREAU OF CONSTRUCTION AND REPAIR,
Washington, March 13, 1874.

SIR: It appears by the records of this Bureau that under date of October 12, 1861, Daniel S. Mershon, jr., contracted to build for the Government a double-ender gun-boat, the workmanship and material to be equal to the Miami, then building in the Philadelphia navy-yard; that specifications were furnished the contractor which gave dimensions somewhat larger than the Miami, and that after the contract was made those dimensions were increased to the size named in Mr. Mershon's claim, and that the size of materials used was also increased.

In building a larger vessel, necessarily increasing the cost above that contracted for, the claimant is entitled to the difference of cost.

Very respectfully, your obedient servant,

I. HANSCOM,
Chief of Bureau.

Hon. JOHN H. BURLEIGH,
House of Representatives.

It appears that upon the completion of the vessel, and its acceptance by the Government, the claimant made continuous applications for relief, and was precluded from appearing before a board of officers organized by the Navy Department pursuant to the resolution of the Senate of March 9, 1865, to determine the increased cost of vessels which were contracted to be built in the years 1862 and 1863, from the fact that his contract was made in October, 1861, and consequently not considered.

After the passage of the act of March 2, 1867, entitled "An act for the relief of certain contractors for the construction of vessels of war and steam-machinery," the claimant presented his claim for the consideration of the board organized by the Navy Department, in pursuance thereto, and as appears from the findings of said board, his claim was not "considered within the province of the board," and for which he was not responsible.

The claim in this case was not for additional compensation based upon the advance in price of material and labor after the date of his contract, as was the case with a large number of contractors who obtained relief through the action of the board of officers referred to, but for violation of contract, and which fact he has satisfactorily established.

From the evidence submitted, and after a careful examination of the whole matter, the committee are impressed with the justice of the claim and recommend its payment; they therefore report the accompanying bill, and ask its passage.

IN THE SENATE OF THE UNITED STATES.

APRIL 9 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, having had the resolution of the legislature of Minnesota in regard to an investigation of the affairs of the Pension-Office under consideration, report that the charges are too vague to justify an investigation, and beg to be discharged from its further consideration.

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IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Mary Blanton, praying to be allowed a pension, submit the following report:

Mrs. Blanton claims to be the widow of Burrell Blanton, a soldier in Captain Navalle's company and in Col. John Earle's regiment of North Carolina Militia, in the war of the Revolution, having been married to him on the 13th day of October, 1833. Her husband died on the 14th day of May, 1861, at the age of 99 years. She has made ineffectual application for a pension to the Pension Bureau, and admits in her petition that she is not entitled to one under existing law; still, on account of her age and necessities, she prays Congress to grant her one, to date from the 25th of July, 1866. No evidence except as to her identity accompanies the petition.

The Commissioner of Pensions, in a letter to the committee, says the petitioner was allowed a land-warrant because of her husband's service of three months in the war of 1812; but her claim of pension was disallowed because the law requires service of six months by the soldier to entitle her to receive a pension *on account of services in the Revolution*.

The committee, seeing no ground on which to allow the petition, ask to be discharged from its further consideration.

IN THE OFFICE OF THE UNITED STATES

ASSETS & LIABILITIES—Ordered to be printed

Mr. Abbott submitted the following

REPORT

The Commission on the subject of the rights of the widow of a soldier, deceased, to be allowed a pension, submitted the following report:

Mr. Abbott claims to be the widow of Daniel H. Abbott, a soldier in the 2nd Maine Infantry, who was killed in the battle of Antietam, September 17, 1862. He was married to her on the 15th day of October, 1855. Her husband died on the 15th day of September, 1862, at the age of 35 years. She has made no application for a pension to the Pension Bureau, and admits in her petition that she is not entitled to one under existing law; still, on account of her age and necessities, she begs Congress to grant her one, to date from the 15th of July, 1862. No evidence except as to her identity as the widow of the soldier is presented.

The Commission on the subject of the rights of the widow of a soldier, deceased, in a letter to the committee, says: The pensioner was allowed a pension because of her husband's service of three months in the war of 1812; but her claim of pension was disallowed because the law requires service of six months by the soldier to entitle her to receive a pension as widow of a soldier in the war of 1812.

The committee, seeing no ground on which to allow the pension, set it aside from its further consideration.

IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1874.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Mrs. Mary W. Jones, widow of the late Commodore Thomas Ap C. Jones, praying for increase of pension, report :

The petition sets out that Commodore Jones died in 1858, after fifty-three years' service in the Navy, from disease mainly produced by a wound received in the service in battle; that petitioner received a pension of \$50 per month from July 1, 1858, to January 1, 1870; at the last-named date her pension was reduced in common with those of others to \$30 per month; that she has recently noticed from the proceedings in Congress that pensions at the rate of \$50 per month are being granted to several persons, and, therefore, petitioner prays she may be restored to the pension-rolls at the rate of \$50 per month. Petitioner refers to the services of her son, who was lieutenant-commander in the Navy, who died in 1866, after twenty-five years' service, and presents no other paper or proofs. Unless a stronger case can be presented than appears from the brief statements contained in the petition, we think upon the grounds stated it would not be prudent to recommend an increase of pension in this instance, and, therefore, ask to be discharged from the further consideration of the case.

IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 682.]

The Committee on Claims, to whom were referred the memorial and papers of the board of trustees of the Methodist Episcopal Church at Arlington Heights, commonly known as Hunter's Chapel, praying compensation for the use and occupation of their church-building, and the use of the materials composing the same, by the troops of the United States, submit the following report:

The church-edifice for which compensation is sought in this case was called Hunter's Chapel. It was a frame building erected two years before the war, of the dimensions of 40 by 26 feet, with a recess at one end for the pulpit, furnished with seats, and having a gallery extending across the south end. It stood where a cross-road entered the Columbia pike, on Arlington Heights, Alexandria County, Va., three miles from the south end of the Long Bridge. It was painted inside and out, wainscoted 3 feet from the floor, and the remainder of the room plastered. It had three large windows on each side, except on the south, where entrance was had by a double door, which was flanked by windows. The roof was of cypress shingles, and the siding of white-pine. The proofs show that it would cost \$3,000 to replace it.

The title was in the board of trustees of the Methodist Episcopal Church of the United States of America. At the beginning of the war two female members were disaffected to the Government, withdrew and went South, and have never returned. With that exception, the entire church organization, consisting of minister, trustees, and members, was loyal to the Government of the United States, and opposed to the rebellion. All of the old trustees are dead, with one exception, who is a feeble old man. The present trustees were chosen, according to the rules and discipline of the church, by the quarterly conference.

Immediately after the adoption by Virginia of the ordinance of secession the church was taken possession of by a detachment of United States troops under the command of Captain Brackett and Lieutenant Drummond, and it was occupied as an advance picket-post, and loop-holed for defense, and used as a block-house, to resist an attack. Immediately after the disaster at Bull Run, General Richardson's brigade lay near the church and threw up a line of breast-works, and the church was used as a place of shelter. Early in the fall of 1861 General Blenker's division occupied these grounds, and he went into winter-quarters near the chapel, and his officers took possession and used it as a depot of commissary stores until the spring of 1862. Stored in the building

were corn, oats, beans, soap, hard-bread, meat, and the usual provisions issued to the Army. After this the building was used to stable Army horses. In the summer and fall of 1862 the building was torn down piecemeal, and the material used to build huts and barracks. Fort Richardson was near by, and considerable of the material was taken there by the Fourteenth Massachusetts Heavy Artillery. One witness swears that the soldiers of his company took this material under the advice of their captain.

The deed for the property was not produced, but secondary evidence was furnished of Mrs. Hunter, after whom the chapel was named, having made a title to the trustees for the ground upon which the building was erected.

There is no evidence before the committee as to the value of the materials of the church appropriated by the soldiers for erecting for themselves places of shelter. Before the demolition, the church was used for upward of a year by portions of the United States troops for the purposes above stated, but the value of that use is not given. All of the witnesses agree that it would take \$3,000 to replace the building as it was.

It seems from the evidence that after Captain Bracket first took possession of it, until its destruction, that part of Virginia was always within the lines of the Union forces.

We have now stated all the material facts in the case, and it only remains to state the conclusion of the committee, without going into the argument. That conclusion is, that the United States ought to pay the trustees the value of the church-building. The case differs from the losses by war commonly brought before us, in the fact that the property appropriated, used, and destroyed, was erected and used exclusively for religious worship, and belonged to a religious organization thoroughly loyal throughout the war. The committee submit that the sentiments of mankind distinguish property devoted to religious and charitable uses from that of private ownership in the settlement of questions of this character. Churches, hospitals, asylums for the unfortunate, and even schools and colleges, are built from contributions by many inspired by motives which do great honor to human nature. Such buildings are generally respected by belligerents. When, as sometimes happens, brutal soldiery have applied the torch to structures of this kind, the act has met the reprobation of mankind. There was a case of that kind, which occurred during the Revolutionary War, in the winter of 1780, distinguished for its severity, when Washington's army was huddled among the heights of Morristown. A marauding party sent out by Kynphausen, crossed from Staten Island to Trembly's Point, surprised the picket-guard at Elizabethtown, burned the town-house and church of the Rev. James Caldwell and plundered the inhabitants. History has pardoned all the other particulars of the raid, except the virulent tory who applied the torch to the church, and as it burned regretted that the black-coated rebel, Caldwell, was not in the pulpit.

In the debate in the Senate on January 12, 1869, it was asserted by a distinguished Senator, now no more, that amid the struggles of the Revolutionary War, as early as 1779, Rev. Dr. Witherspoon was allowed \$19,040 for repairs of the college at Princeton, damaged by the troops. There was afterward a similar allowance to the academy at Wilmington, Del. These were recommended by Mr. Hamilton while Secretary of the Treasury, as affecting the interests of literature. (See *Globe*, vol. 71, p. 301.)

Congress has passed bills re-imbursing East Tennessee University for

damage by reason of use and occupation of buildings by United States troops. (See Globe, vol. 89, p. 22-88.)

Kentucky University was re-imbursed for same cause. (See Stats. at L., vol. 16, p. 688.)

There is no direct proof as to the actual loss on account of the destruction of the building. The proof is confined to the estimates of witnesses what it would cost to restore it. The committee, in view of the fact that the church had been erected some time before it was taken possession of by the troops, are of opinion that \$2,000 will indemnify the trustees, and recommend the payment of that sum, and report a bill accordingly.

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IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1874.—Ordered to be printed.

Mr. WINDOM submitted the following

REPORT:

[To accompany bill S. 486.]

The Committee on Public Lands, to whom was referred the bill (S. 486) entitled "A bill to revive and continue certain grants of lands heretofore made to the Territory and State of Minnesota to aid in the construction of the several lines of the Saint Paul and Pacific Railroad Company," having had the same under consideration, respectfully submit the following report :

By an act approved March 3, 1857, Congress made a grant of lands to the Territory of Minnesota, to aid in the construction of certain lines of railroad, and among others a railroad from Stillwater via Saint Paul, Saint Anthony, and Minneapolis, to Breckenridge, on the Sioux Wood River, with a branch from Saint Anthony via Onoka, Saint Cloud, and Crow Wing, to Saint Vincent, near the mouth of Pembina River. This grant amounted to six sections per mile for both the main and branch lines of railroad.

By an act of Congress approved March 3, 1865, the above grant was increased to ten sections per mile.

By an act of Congress approved March 3, 1871, a change of the lines was authorized. The effect of this act was to extend the line of road from Crow Wing to Brainerd, a point on the Northern Pacific Railroad, and a second branch from Saint Cloud, via the Sauk Valley County, to Saint Vincent, on the international boundary, with the same proportionate grant of lands to aid in their construction as had before that time been granted by prior acts of Congress.

By the provisions of this act, the time for the completion of these branches was limited to the third day of March, 1873.

By an act of Congress approved March 3, 1873, the time for the completion of these lines, to wit, from Watab to Brainerd, and from Saint Cloud to Saint Vincent, was extended for a period of nine months, to wit, until the third day of December, 1873.

The company to whom was confided the construction of the above lines of railroad was organized under the laws of the Territory of Minnesota, and known as the Minnesota and Pacific Railroad Company, and subsequently as the Saint Paul and Pacific Railroad Company, and in 1864 the first division of the Saint Paul and Pacific Railroad Company was organized, and constructed the lines from Saint Paul to Watab, and from Saint Anthony to Breckenridge, a total distance of 280 miles.

Those portions from Saint Cloud to Saint Vincent, and from Watab to Brainerd, constitute the Saint Paul and Pacific Railroad. About the

1st of April, 1871, the First Division Company made a contract with the Saint Paul and Pacific Company, whereby the First Division Company agreed to construct and equip the lines from Watab to Brainerd and from Saint Cloud to Saint Vincent, also to take a lease of these lines for 99 years, and to make the bonds provided for by a mortgage on such lines, to dispose of such bonds by sale thereof, and with the proceeds to pay for such construction and equipment.

Fifteen millions of dollars, in first mortgage bonds, were issued, and sent to Lippman, Rosenthal & Co., the bankers of the railroad company in Amsterdam, Holland, for the purpose of sale. This mortgage provides that all the proceeds from the sale of these bonds shall be used in the construction and equipment of these branch lines of railroad. Under this arrangement contracts were made with De Woff & Co., contractors, in October, 1871, for the completion of said lines from Watab to Brainerd and from Saint Cloud to Saint Vincent, within the time fixed by Congress, to wit, the 3d day of March, 1873.

During the fall of 1871 the contractors made and delivered 1,100,000 cross-ties, and prepared all the square timber and bridge timber necessary for the construction of the entire lines, to wit, from Watab to Brainerd, a distance of 60 miles, and from Saint Cloud to Saint Vincent, a distance of 320 miles of main track, in all, 380 miles of main track which, with 20 miles of side tracks, made an aggregate of 400 miles of railroad.

During the winter of 1871, 1872, a very important bridge across the Mississippi River at Saint Cloud, some 800 feet in length, was fully completed, and a large force of men were employed in grading the road-bed through the big woods, and during the spring and summer of 1872 a small army of men was kept employed in grading, laying track, ballasting, &c., and remained so employed until the commencement of October in that year. All arrangements necessary to insure the completion of the entire work within the time fixed by act of Congress had been made by the contractors, and had the funds necessary to carry on the work been furnished as per agreement, the work would have been completed within the time specified.

The company had received the most positive assurances from their bankers in Holland that the funds necessary to complete the entire road would be furnished as fast as wanted for that purpose, and therefore urged the contractors to a most vigorous prosecution of the work. Until early in July, 1872, there were no indications of failure in this respect; but, on the contrary, everything pointed to an entire success of the enterprise. About this time, however, remittances from the company's bankers ceased to be made, while the most positive assurances were given that in a short time the necessary funds would be found. Acting upon these assurances, and in view of the shortness of time wherein to complete, the contractors proceeded with the work as vigorously as though the money had been furnished them, drawing entirely upon their own resources, and such as they could obtain from capitalists and other citizens of Minnesota, to meet their large expenditures from day to day.

The most encouraging assurances, however, continued to be made of the ability and determination of the bankers in Holland to furnish the means necessary to complete the lines and save the grant of lands, and the contractors continued the work with unabated energy until the 6th of October, 1872. They had then expended of their own means and such as they could obtain from other citizens of Minnesota, for work and labor done and material and supplies furnished, something over

nine hundred thousand dollars. This work was all done at great cost, in an uninhabited district of country, far from any base of supplies.

The company's bankers abroad claim that, on account of our foreign complications growing out of the Alabama claims, and because of the existence of the war between France and Germany, together with the complications in which these disasters involved foreign capitalists, it was impossible for them to dispose of the bonds of the railroad company so as to meet the current expenses of the construction of this work. The consequence was a suspension about the 6th of October, 1872. The financial agents of the company in Europe were, however, most hopeful of a better state of things, and of an increased appreciation of American securities, and that in a short time they would be enabled to remit all the funds necessary to complete the works so well and so largely advanced. Reliance upon these pledges induced the company to ask Congress for an extension of time wherein to complete these lines of nine (9) months only; that is to say, from the 3d day of March to the 3d day of December, 1873. Soon after this extension was granted the financial difficulties began to multiply, until they resulted in the great money crisis of last year, and of consequence it was impossible for the company to proceed with the work.

Since the suspension of work, however, the company has paid a portion of the indebtedness due to citizens of Minnesota, leaving a balance of about \$500,000 still due for labor done and material furnished.

At the time of suspension the condition of the work was as follows, to wit:

On the line from Watab to Brainerd, distance 60 miles, the grading and bridging is completed for 53 miles, uncompleted for 3 miles, and iron laid on 4 miles, cross-ties and timber all furnished on the ground. On the line from Saint Cloud to Saint Vincent, distance 320 miles, iron is laid on 139 miles, to wit: from Saint Cloud to Melrose, 35 miles, and from a point 12 miles south of Glyndon Junction, on the Northern Pacific Railroad, to a point 92 miles north of said junction, in all 104 miles, which, with the 35 miles mentioned, makes an aggregate, as stated, of 139 miles. Between Glyndon Junction and Saint Vincent the grading is entirely completed, and bridges ready for a distance of 50 miles, leaving 13 miles only of light grading to complete to the British line. Between Saint Cloud and Glyndon Junction the grading is completed for 75 miles, leaving but 42 miles uncompleted. In the aggregate there remains upon all the lines not to exceed 600,000 cubic yards of earth-work. Bridges for uncompleted portions are framed and delivered, and ties for the entire road are delivered. There have been actually expended upon the work \$3,500,000. To complete all the grading and mechanical structures \$575,000 will be required. To furnish iron rails, spikes, splices, &c., \$2,400,000 will be needed, and about \$1,000,000 more will equip the road, furnish depots, water-tanks, turn-tables, &c. In all, then, it will require \$3,975,000 to fully complete and equip the lines of road in a first-class manner. This amount, it is believed, can only be obtained by an extension of the time within which the roads may be completed. The country through which they pass, although possessing all the natural advantages necessary to make it a rich agricultural country, is yet comparatively new and unsettled. The people along these lines of road have contributed liberally of their limited means to this work. Large numbers of emigrants have been attracted to the country, and have taken up lands and settled upon them. Unless these roads are speedily completed, great distress will visit these hardy

frontiersmen, and give a set-back to the settlement of that rich country, not to be regained in many years.

The large expenditures already made will be lost in a great measure, unless additional time is given to complete the roads. Much of the material on hand is perishable, and can be resupplied only under increased difficulties.

The importance of these roads to the development of Minnesota cannot be overestimated. They traverse some of the most fertile, beautiful, and healthful districts in the Northwest. The Sauk Valley, and the great valley of the Red River of the North, both made accessible by these roads, are proverbial for their vast natural resources. In addition to the large number of emigrants who have been induced to settle in these valleys, by the location of these roads, whose disappointment will be great, and their loss will be large, it is certain that large bodies of emigrants will join the pioneers, should the roads be speedily completed, and that at no distant day the whole country through which these roads are located will become densely populated, and thus will the prosperity and wealth of Minnesota be enhanced. The fact of the road running in the valley of the Red River of the North will form a strong barrier against the incursion of hostile Indians, and allow the civilized Indians an opportunity of developing under the fostering hand of the Government. Transportation for the troops, supplies, and munitions of war will be supplied to the Government for all the military posts between Saint Paul and the British line, and will greatly reduce the cost of supplying the Indians. At the international boundary the road will connect with the railway to be built this year between Saint Vincent and Fort Garry, in Manitoba, and opening a vast market for the surplus of Minnesota. The legislature of the State of Minnesota has, with great unanimity, memorialized Congress to extend this grant of lands to her. In doing so, she has provided that her legislature may impose such conditions as to rates of transportation for freights and passengers as experience has shown to be of vital necessity. To this the railroad company has assented, thus relinquishing the right, which it would otherwise have had, to dictate such rates as it might deem best for its own interests. The company now ask an extension of time until January 1, 1876. The State of Minnesota has already passed an act providing for such extension in the event of Congress giving the additional time asked for.

The committee, therefore, recommend the passage of the accompanying bill, with the amendments indicated.

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IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1874.—Ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

[To accompany bill S. 228.]

The Committee on Claims, to whom was referred the bill (S. 228) for the relief of Bigler, Young & Co., having considered the same, submit the following report:

The circumstances under which the claim originated are thus stated in the memorial of Bigler, Young & Co., addressed to the Light-House Board, and presented with this bill:

To the Light-House Board, Washington City, D. C.:

GENTLEMEN: Some of you are so familiar with the circumstances under which the undersigned agreed, in March last, to carry out a contract that had been previously made for the erection of a light-house in the Chesapeake Bay, that it would seem unnecessary to repeat them in this paper; but it is proper to do so in order to give clearness and force to the application we now make.

Francis A. Gibbons had contracted with the Government for the erection of two light-houses in the Chesapeake Bay, one at Choptank River and the other at Love Point. In March, 1871, the undersigned entered into an agreement with said Gibbons to furnish the iron-work for said houses, and draw the payment from Government after the completion of the buildings, on power of attorney, as provided for in Mr. Gibbons's contract with the Government. The iron-work for that at Choptank River was delivered in August following, and that for Love Point was inspected and accepted by the Government agent on the 19th of September ensuing.

Mr. Gibbons expected to have both houses erected before winter set in, but the vessel that conveyed the first set of irons was stranded and sunken, and serious delay ensued. And then again, when Mr. Gibbons commenced to put down the piles, he found the location an exceedingly difficult one, and great delay ensued. In short, it took the whole season to put up the light-house at Choptank River, and required all and more means than Mr. Gibbons could command, for the undersigned were compelled to advance him largely.

When the house at Choptank River was completed, it was entirely too late in the season to commence that at Love Point, and we could draw no pay of the Government on the latter, although the irons had been inspected and thereby passed into the legal possession of the Government in the preceding September. When we applied to Mr. Gibbons to know when and how we were to get pay for the iron-work, he said he could do nothing; that he had lost so largely on the house at Choptank River, that he was unable to proceed further; that he could not command the means to erect the house at Love Point, and of this the undersigned had abundant proof, both as to Mr. Gibbons and his sureties.

So the matter stood until February, 1872, when Mr. Gibbons was prostrated by serious indisposition, which seemed to endanger his life. He caused the undersigned to be informed of his condition, and Mr. Bigler repaired to Baltimore to see him, and to consult with the engineer and the Light-House Board as to what could be done to secure payment for our iron-work, Admiral Jenkins being then the acting head of the board. The utmost disposition was manifested to afford us relief, but the difficulty was to find the proper means. With the consent of Mr. Gibbons, the undersigned proposed that the Government should take the materials at cost, or at their real value and release the contract. This the board declined, only because it had not the power under the law to do so.

It was finally intimated to the undersigned that Mr. Gibbons would be permitted to assign his contract to them, and in this way they could get pay for the iron-work, and the Government would get the light-house.

This proposition led to the inquiry as to how the amount to be paid would compare with the amount to be expended. We looked into the question as best we could, aided to some extent by Colonel Haines, who intimated to us that we would be likely to lose on the work, and it is due to him to say that he declined to give us any advice whatever. Admiral Jenkins was exceedingly anxious for the completion of the work; and while in no way committing the board to relieve us if we lost, he did say that in his opinion the Government ought not and would not permit us, under the circumstances, to lose on the work.

After due consideration the undersigned concluded to accept a transfer of the contract and take the material and tools that Mr. Gibbons had on hand at cost, except reasonable deduction on the tools.

The transfer was carried out with Major Elliott after Admiral Jenkins had left the office.

The work was commenced in April last, under the direction of Mr. Bigler, and prosecuted to completion with the utmost diligence and the closest economy, and the statement hereto annexed shows that we paid out \$14,694.55 and received \$13,000.

[Signed by the firm.]

Upon reference of the bill and this petition to the Light-House Board, the following reply was received:

TREASURY DEPARTMENT, OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, February 14, 1873.

SIR: I have the honor to say, in reply to your letter of the 11th instant relative to the claim of Messrs. Bigler, Young & Co. for relief on contract for constructing Love Point light-house, that the statements set forth in the accompanying petition are believed to be true; and considering the fact that Messrs. Bigler, Young & Co. were not the original contractors for the light-house, but were subcontractors; that when the contractor failed to fulfill his contract, the intervention of Messrs. Bigler, Young & Co., and their assumption of his responsibilities, saved the appropriation from reversion to the Treasury under existing laws, so that commerce had the advantage of the light without being subject to the detriment of waiting for a re-appropriation by Congress; that the amount named in the bill is certified to be the amount actually paid out by Messrs. Bigler, Young & Co. in excess of the amount of the original contract-price received by them; and that they have omitted all charges for personal superintendence in erecting the light-house on the shore; the board is of the opinion that the case is an unusual one. Ordinarily, the payment of contractors for losses is not to be thought of, and such claims are opposed by the board; but if the petition of Messrs. Bigler, Young & Co. should have the approval of Congress, and they should be paid the amount claimed, the board considers that the award will be equitable and just.

Very respectfully,

JOSEPH HENRY,
Chairman.

Hon. JOHN SCOTT,
Committee on Claims, United States Senate.

A subsequent letter from Admiral Jenkins, after reciting substantially the same facts, closes by saying:

My opinion is that they [Bigler, Young & Co.] are justly entitled, under the peculiar circumstances of the case, to full re-imbursement of the losses they sustained.

In view of the facts presented, and the opinion of the officers of the Light-House Board, from which it is evident that the Government would not only not have received until a late date the benefit of the light-house, but would have incurred increased cost by having the work done by new contractors, we think it just and equitable to allow the amount named in the bill, which simply pays Messrs. Bigler, Young & Co. the amount of their actual expenditures, without any allowance for their time or personal expenses in completing the contract, and we recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1874.—Considered, agreed to, and ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

The Committee on Claims, to whom were referred the petition and papers of the Mercantile Mutual Insurance Company of New York, claiming the re-issue to them of legal-tender notes to the amount of \$8,000, in place of notes to that amount insured by them, alleged to have been lost at sea, having considered the same, submit the following report:

This case was presented to the Thirty-eighth Congress. A bill granting the relief prayed for passed the House of Representatives and was favorably reported from the Senate Committee on Claims, (H. R. 456; Senate Report 126, Thirty-eighth Congress.)

It was again presented to the Forty-first Congress, (after being before the Thirty-ninth and the Fortieth without action,) and the following adverse report was made by Mr. Pratt, from the Senate Committee on Claims:

That it appears to the committee that the firm of J. H. Brewer & Co., of New York, desiring to remit to their correspondents in New Orleans, E. J. Hart & Co., by the United States mail, in the year 1863, two sums of money of the amounts respectively of \$3,000 and \$5,000, in legal-tender notes, of the denomination of \$1,000 each, applied to the Mercantile Mutual Insurance Company for insurance against loss, including risk of war. One application is dated the 21st November, 1863; the other December 8, 1863. The company made insurance and caused to be insured lost, or not lost, at and from New York to New Orleans, by United States mail, on May 17, 1863, the following legal-tender notes, addressed to E. J. Hart & Co., New Orleans, including the risk of capture or seizure by or arising from acts of the seceding or revolting States, lettered and numbered as follows, viz:

B. 18270, \$1,000; D. 7016, \$1,000; D. 18428, \$1,000; A. 14981, \$1,000. And on the 21st November, 1863, the following other legal-tender notes, lettered, numbered, and dated as follows:

- A. 17097, March 10, 1862, \$1,000.
- A. 20421, March 10, 1862, \$1,000.
- C. 20251, March 10, 1862, \$1,000.

And on the 3d of December, 1863, the following other legal-tender notes, lettered, numbered, and dated as follows:

- A. 437, March 10, 1862, \$1,000.
- A. 7221, March 10, 1862, \$1,000.
- C. 4955, March 10, 1862, \$1,000.
- C. 8303, March 10, 1862, \$1,000.
- C. 8531, March 10, 1862, \$1,000.
- C. 9335, March 10, 1862, \$1,000.

And on the 8th day of December, 1863, the following other legal-tender notes, lettered, numbered, and dated as follows:

- B. 9962, March 10, 1862, \$1,000.
- D. 5820, March 10, 1862, \$1,000.
- D. 11900, March 10, 1862, \$1,000.
- D. 216, March 10, 1862, \$1,000.
- D. 7164, March 10, 1862, \$1,000.

All of these different lots of United States notes were to be transmitted by the United States mail from New York to New Orleans, the first amounting to \$4,000, on board the screw-steamer Yazoo, but as to the remaining packages there is no specification of the vessel.

No complaint is made of the loss of the first and third lots, amounting to \$9,000, but it is alleged the remaining second and fourth lots, amounting to \$8,000, were regularly indorsed by the insurance company, in envelopes properly addressed to E. J. Hart & Co., at New Orleans, and deposited in the post-office at New York City, and regularly forwarded in the United States mail-bags by sea on board the steamer Quincy, on the 8th day of December, 1863, and that, on the 13th day of that month, the steamer foundered at sea, and the cargo and mails on board went down with the vessel, and were irrecoverably lost. This is the claim of the insurance company, which, having paid the loss to J. H. Brewer & Co., and received from them an assignment of all their title to the notes lost, appealed to Congress to make them whole.

The relief they ask is, that the Secretary of the Treasury be authorized to issue and pay to them, as the assignee of J. H. Brewer & Co., eight United States notes, not bearing interest, of \$1,000 each, in lieu of the eight notes described above in the second and fourth lists above, bearing the same letters, dates, and numbers, upon the condition that the company execute a bond in the penal sum of \$16,000, to be approved by the solicitor of the Treasury, indemnifying the United States against any loss on account of the issuing of said bills.

For the risk assumed the company charged and received of J. H. Brewer & Co. one per cent., or \$90, on the two packages not lost, \$80 on the two packages believed to be lost.

The testimony consists of the affidavits of the president of the company, his two clerks, the superintendent of the mail at the post-office at New York, and several survivors of the steamer's loss.

The package of \$3,000, insured on 21st November, 1863, was delivered by the president of the company, Ellwood Walter, to E. M. De Rose, one of his clerks, to be deposited in the post-office; but this gentleman omitted by accident to carry out his instructions until the 7th of December, and consequently it did not go by the steamer intended.

The package of \$5,000, insured on 7th December, 1863, was delivered by the president of the company to Henry Walterby, or another clerk, who testifies that he deposited the package containing the notes, properly sealed, into the post-office on the 8th day of December, 1863. Both clerks testify that the packages, with their respective inclosures of legal-tender notes, remained sealed and intact up to the time they were deposited in the post-office.

Thomas Clark, the superintendent of the mails in the New York post-office, testifies that on the 8th day of December, 1863, a mail was made up under his direction to be sent to New Orleans by the steamer Quincy; that all letters destined for New Orleans deposited in the post-office on the 7th and 8th days of December, 1863, before 2 o'clock p. m. of the last-named day, were placed in the mail so made up, to be dispatched by said steamer, which was to have sailed on the 8th; that for some reason the Quincy did not sail until the 9th; that said mail was placed on board and dispatched by said steamer.

The remainder of the testimony relates to the circumstances of the loss of the steamer on the 13th, in the morning, off Hatteras. Sixteen persons perished; nine only were saved, and three of these survivors testify nothing was saved; cargo and mails went down with the foundered vessel.

Such is the case made by the memorialist. The evidence is of course all *ex parte*. A cross-examination of one of the witnesses at least, Mr. Clark, must have disclosed a weakness in the petitioner's case. How could Mr. Clark know that the mail-bags made up under his supervision contained all the letters and packages addressed to New Orleans? How does he know, how can he know that the packages deposited in the post-office by the two clerks, one on the 7th, the other on the 8th, were ever forwarded at all? He does not know, and could not be expected to know, and he does not say that he does. There is no evidence that these packages were on board the steamer, except the presumption that would naturally arise that the employés of the post-office did their duty. If they did, these letters, with their inclosures, were on board the ill-fated steamer. But if the packages were embezzled in the post-office, then they were not lost at sea. If the mail-bags were rifled of these valuable packages on their way to the steamer or on board of her, then they were not sunk in the sea.

And, again, if these greenbacks went to the bottom of the sea and stayed there and rotted, then it is quite evident that the Treasury Department will never be called on to redeem them. But who knows whether they are IRRECOVERABLY lost? Who knows that they are not in circulation at this moment?

It was the business of the memorialist to put this question beyond any peradventure. And why? Because if these notes are not destroyed, and should get into circulation, the Government must redeem them upon presentation by an innocent holder,

although it were demonstrable they were stolen from the post-office or mail-bags. This rule was quite recently laid down by the Attorney-General. (See vol. —.)

If this were an isolated case, the only one that has occurred or was likely to occur, there would be no great hazard or difficulty in re-imbursing this company their loss upon ample guarantee. But with an outstanding acknowledged indebtedness of over two thousand four hundred millions of dollars, much of it, probably more than one-half, payable to bearer, it is dangerous and quite impracticable to establish a precedent that must be followed in every case of probable loss, backed by the identical reasons urged here. Let such a precedent find its way upon the statute-book, and it is a public advertisement for similar applications to Congress. The work at the Treasury would be greatly augmented. No Government obligation payable to bearer can be redeemed until it is compared with the descriptive list of losses.

The committee find less cause to regret the conclusion to which they have arrived in the fact that the memorialists were paid for this risk. It was their business to insure against such losses.

The committee, after again considering the case, concur in the conclusion arrived at in the foregoing report. Conceding that the loss of the notes is made out to a reasonable degree of certainty, we cannot agree that it would be a safe practice to authorize the re-issue of such notes upon indemnity, such as is provided for in the case of interest-bearing bonds by the general law of June 1, 1872, which is now urged upon us as recognizing the principle involved. The coupons maturing every six months are pretty sure soon to be presented, if, by any collusion or mistake, there has been a re-issue of a bond supposed to have been destroyed. Such would not be the case with legal-tender notes, which might remain out for ten years or more. The act for the issue of bonds, moreover, is confined to the cases where clear and unequivocal proof is made that the bonds have been destroyed. A reasonable certainty that notes had been lost, it seems to us, would not place them even upon a footing with bonds under this act. The door that would be opened to collusion would subject the Treasury to a very great risk if we were to sanction the practice here asked to be inaugurated, and we again ask to be discharged from the consideration of the case.

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purposes, approved July 20, 1868, provides "that all necessary letter-press printing and book-binding in all the Departments and Bureaus shall be done and executed at the Government Printing-Office."

The act making appropriations for the legislative, executive, and judicial expenses of the Government, for the fiscal year ending June 30, 1870, approved March 3, 1869, provides "that all blank books and binding shall be made and done at the Government Bindery; and all payments of public money for Government printing or binding not done at the Government Printing-Office, according to the provisions of the act of July 20, 1868, shall not be allowed by the accounting officers of the Government."

The act making appropriations to supply deficiencies in the appropriations for the service of the Government, approved March 3, 1871, provides "that no printing shall be hereafter executed except on written order, under the direction of heads of Departments, or by the two Houses of Congress, as authorized by law."

The act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1874, and for other purposes, approved March 3, 1873, contains the following items: "For the public printing, for the public binding, and for paper for the public printing; two million dollars; and of the sum hereby appropriated, printing and binding may be done by the Congressional Printer to the amount following, namely: For the Court of Claims, fourteen thousand dollars * * * For the Supreme Court of the United States, twenty-five thousand dollars; * * * For the supreme court of the District of Columbia, one thousand dollars; * * * For lithographing, mapping, and engraving for both Houses of Congress, the Supreme Court, and the Court of Claims, fifty thousand dollars."

The Congressional Printer is clearly bound by the above-cited statutes to execute the printing ordered by the courts up to the limits of the specific appropriation for each. It is not for him to question the expediency of executing the order which he receives from those to whom Congress has entrusted the expenditure at the Government Printing-Office of their respective appropriations. But while the Congressional Printer has performed and is performing his duty in printing these records, the committee do not see the justice of thus printing at the public expense the records of cases which the Government does not bring into the courts. They therefore report such a change in the law as will prohibit the printing of records of cases pending in the Court of Claims or in the Supreme Court, unless the United States shall be appellant or plaintiff in error; and in cases wherein the United States is not appellant or plaintiff in error, the record shall be printed under the direction of the court at the cost of the party bringing such record into the court, which cost, in the Supreme Court, shall be taxed as other costs in the case.

Secondly. The testimony of the Treasury Department is that the printing and binding that was formerly executed by contract, and that is now executed at the Government Printing-Office, is 50 per cent. better in quality, and about 25 per cent. cheaper in price, than when it was executed under the old system. The contract-system was abandoned, and the work was transferred to the Government Printing-Office on account of the extravagance and frauds under the former. The contract-system, which is the fairest in theory, is susceptible of enormous frauds when applied to mechanical work and to work of an indefinite character. Besides the cheapness and superior excellence of the work, as at present executed, there is great advantage in the uniformity of the

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1874.—Ordered to be printed.

Mr. ANTHONY submitted the following

REPORT:

[To accompany bill S. 689.]

The Committee on Public Printing, to whom was referred the memorial of Joseph L. Pearson and others, employing printers of Washington, have had the same under consideration, and beg leave to report :

The memorial alleges four complaints against the management of the Government Printing-Office, viz :

First. That the printing of the Supreme Court and of the Court of Claims is executed at the Government Printing-Office, for which there is "no warrant of law, and that the Superintendent of Public Printing had neither law nor justice to enable him to execute the work required."

Secondly. That the work for the custom-houses and post-offices throughout the country is executed at the Government Printing-Office at a cost of 25 to 30 per cent. above that for which it could be executed at private offices.

Thirdly. That the printing of the Patent-Office can be executed by contract at prices 20 per cent. below the cost at the Government Printing-Office, and that "The Official Gazette published at one dollar a year by the Patent-Office is an outrage on all propriety."

Fourthly. That "speeches of members of Congress are now being printed at the Government Printing-Office, against everything that has the name of or similitude of law, justice, or right."

The committee, having heard the memorialists, orally and in writing, and having addressed inquiries to the Congressional Printer and to the Commissioner of Patents, from both of whom they have received replies, have arrived at the following conclusions on the four specific allegations quoted above, successively, viz :

First. The law that requires the printing of the Judicial as well as of the other Departments of the Government to be executed at the Government Printing-Office is very explicit, and is repeated in the following statutes :

The joint resolution approved June 23, 1860, authorized and directed the Superintendent of Public Printing "to have executed the printing and binding authorized by the Senate and House of Representatives, the Executive and Judicial Departments, and the Court of Claims ; and to enable him to carry out the provisions of this act, he is authorized and directed to contract for the erection and purchase of the necessary buildings, machinery, and materials for that purpose."

The act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1869, and for other

purposes, approved July 20, 1868, provides "that all necessary letter-press printing and book-binding in all the Departments and Bureaus shall be done and executed at the Government Printing-Office."

The act making appropriations for the legislative, executive, and judicial expenses of the Government, for the fiscal year ending June 30, 1870, approved March 3, 1869, provides "that all blank books and binding shall be made and done at the Government Bindery; and all payments of public money for Government printing or binding not done at the Government Printing-Office, according to the provisions of the act of July 20, 1868, shall not be allowed by the accounting officers of the Government."

The act making appropriations to supply deficiencies in the appropriations for the service of the Government, approved March 3, 1871, provides "that no printing shall be hereafter executed except on written order, under the direction of heads of Departments, or by the two Houses of Congress, as authorized by law."

The act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1874, and for other purposes, approved March 3, 1873, contains the following items: "For the public printing, for the public binding, and for paper for the public printing; two million dollars; and of the sum hereby appropriated, printing and binding may be done by the Congressional Printer to the amount following, namely: For the Court of Claims, fourteen thousand dollars * * * For the Supreme Court of the United States, twenty-five thousand dollars; * * * For the supreme court of the District of Columbia, one thousand dollars; * * * For lithographing, mapping, and engraving for both Houses of Congress, the Supreme Court, and the Court of Claims, fifty thousand dollars."

The Congressional Printer is clearly bound by the above-cited statutes to execute the printing ordered by the courts up to the limits of the specific appropriation for each. It is not for him to question the expediency of executing the order which he receives from those to whom Congress has entrusted the expenditure at the Government Printing-Office of their respective appropriations. But while the Congressional Printer has performed and is performing his duty in printing these records, the committee do not see the justice of thus printing at the public expense the records of cases which the Government does not bring into the courts. They therefore report such a change in the law as will prohibit the printing of records of cases pending in the Court of Claims or in the Supreme Court, unless the United States shall be appellant or plaintiff in error; and in cases wherein the United States is not appellant or plaintiff in error, the record shall be printed under the direction of the court at the cost of the party bringing such record into the court, which cost, in the Supreme Court, shall be taxed as other costs in the case.

Secondly. The testimony of the Treasury Department is that the printing and binding that was formerly executed by contract, and that is now executed at the Government Printing-Office, is 50 per cent. better in quality, and about 25 per cent. cheaper in price, than when it was executed under the old system. The contract-system was abandoned, and the work was transferred to the Government Printing-Office on account of the extravagance and frauds under the former. The contract-system, which is the fairest in theory, is susceptible of enormous frauds when applied to mechanical work and to work of an indefinite character. Besides the cheapness and superior excellence of the work, as at present executed, there is great advantage in the uniformity of the

blanks and blank books. This uniformity adds to the authenticity and responsibility of the returns of officials, and diminishes clerical labor at the Departments. A letter from the chief clerk of the Treasury Department on this subject is appended to this report, and marked A.

Thirdly. The printing of the Patent-Office by contract was abolished, and the work was transferred to the Government Printing-Office in 1868, in consequence of an investigation by the House and Senate Committees on Printing of the Fortieth Congress, which disclosed great irregularities and extravagance. A reference to the report of the House committee, giving the result of this investigation, will show how the contract-system, under which the work should have been given to the lowest bidder, was made to conceal extortionate charges both for the printing and for the paper. Since the transfer of the work by law to the Government Printing-Office, it appears by the testimony of the Commissioner of Patents and of the Congressional Printer that it is executed at less than two-thirds of the contract-rates for printing and for paper. The gross amount of the cost of printing these specifications is necessarily larger than it was under the contract-system, as the number of copies printed was increased, under the joint resolution approved January 11, 1871, from 21 to 300, and a considerable amount of additional printing was involved in the preparation of indexes, &c., called for by that resolution.

The subscription-price of the Official Gazette of the Patent-Office is not one dollar a year, as the memorial states, but six dollars a year when but a single copy is taken at a post-office, and five dollars a year when more than one copy is taken, in accordance with the act of Congress authorizing this publication, which directs "that a subscription-price of not less than five dollars per annum for said Gazette shall be charged to each subscriber." The committee regard the Gazette as a valuable addition to the facilities which the Patent-Office affords for the dissemination of information of great value to the inventive genius of the country, and which could nowhere else be obtained. The reports of the Patent-Office were formerly printed annually, and at a constantly-increasing cost, which had already reached the sum of \$212,000, with the certain prospect of growing much larger. On this account they were discontinued, and the Official Gazette was substituted, under authority of an act of Congress. The cost of this is about \$13,000 a volume, which is defrayed to a considerable degree by the subscriptions, which are constantly increasing. There is also a gratuitous distribution of one copy to each Senator, Representative, and Delegate, and, in addition, eight copies to such libraries as he may designate. The former report, printed once a year, reached the public many months after the patents recorded and illustrated in it were issued. The Gazette keeps pace with the weekly issues, and gives much useful information touching the business of the Office and the decisions of the Commissioner and the courts in patent-cases.

Fourthly. The speeches of members of both Houses of Congress, which appear first in the Congressional Record, are printed at the Government Printing-Office, when members order it to be done, in conformity with the acts of Congress approved June 5, 1864, and March 3, 1871, which make it the duty of the Congressional Printer to furnish "extra copies of any document printed at the Government Printing-Office by authority of law," at the cost price of the labor and materials, with the addition of 10 per cent. thereto. The Congressional Record is printed at the Government Printing-Office in accordance with the act approved March 3, 1873, and, while it is in press, members of Congress or any other citizens

can obtain extra copies of any portion of it, by paying the estimated cost thereof, with the addition of 10 per cent. The memorialists evidently suppose that the editions of speeches which have been published during the present session at the Government Printing-Office have been printed at the public expense. It is not necessary to inform the Senate that such is not the case, but that, under the acts of Congress above cited, they are paid for by those Senators, Representatives, and Delegates who order them, and who enjoy, in this respect, no privilege that is not open to all of their fellow-citizens.

The Government reports and prints, at large expense, the proceedings of Congress. If individuals, whether members of Congress or others, will circulate additional copies of all or of complete portions of these reports at their own cost, it is manifestly the policy of the Government to encourage them. But it is not necessary for the present purpose to defend the law. It is sufficient for the Congressional Printer that such is the law, and that he has no discretion in the matter.

The assumption of the memorialists that labor is deprived of any of its rewards because work is done at the Government Printing-Office instead of at private establishments has no foundation in fact. It requires just as many men—indeed, if the allegations of the memorial are correct, it requires more men—to execute the work in the Government-Office than elsewhere. The only difference is that, in the one case, the profits of capital and of superintendence inure to the general public, in the other, to individuals; and while, other things being equal, the work of the Government should be so executed as to stimulate private enterprise and industry, the first consideration should always be the public economy.

The memorialists have also called the attention of the committee to another grievance, which, although not enumerated in their memorial, they consider of great importance. They allege that the legislation of Congress has largely increased the cost of printing, not only to the Government, but to private establishments; that this increase of cost is artificial and arbitrary; that it has no relation to the fair wages of labor; and that it makes the cost of printing greater in Washington than anywhere else in the country.

This legislation, as asserted by the memorialists, is contained in two acts: one prescribes eight hours as a day's work, when the general measure of a day's work is ten hours; the other requires, practically, the Congressional Printer to pay the same prices that are paid in private establishments in Washington.

This last act, however, has been repealed in the act approved July 20, 1868, which provides "that all laws and parts of laws that regulate the prices of labor in the Government Printing-Office be, and the same are hereby, repealed; and it shall be the duty of the Congressional Printer to contract with the persons in that employment at such prices as are for the interest of the Government and are just to those employed." This proviso, like the laws which it repeals, would be perfectly fair if the prices of printing-labor in Washington were allowed to settle themselves, as in other places, by the law of supply and demand. But it appears from the statements of the memorialists that there exists in this city a society of printers, who deny to any persons not of their number the right to work at their trade, and who have entered into an obligation to refuse to work at any establishment which presumes to employ a man outside of their organization; that this society, without consulting the employing printers, fixes the rate of wages; that a majority of the members of the society are employed in the Gov-

ernment Printing-Office, so that whatever rate of wages the employés of the Government Printing-Office agree upon, the society must adopt, and whatever rate the society adopts is imposed upon the private establishments. Then, under the old act of Congress, the Government office was bound to pay what the private employers paid; and, although the law has been repealed, the custom has become so well established that the Congressional Printer hesitates to come into collision with the rules of this society without some law of Congress as his defense, in case the usefulness of the office under his direction should become temporarily paralyzed by the withdrawal of the workmen.

In this way, as appears from the statements of the memorialists and of the Congressional Printer, the printers employed in private establishments here and at the Government Printing-Office have, from time to time, raised their own pay, until, as the memorialists allege, it is from 24 to 56 per cent. above the fair and average price of similar work in other parts of the country. Apparently the only limit to this steady advance in price is the apprehension that printing in Washington may be made so costly that the law will be repealed or the Government Printing-Office be abandoned. And it is to be observed that although eight hours are fixed as the measure of a day's work, no difficulty is found in engaging the men who insist upon it to work ten or twelve, and sometimes fourteen, hours, they receiving a corresponding increase of wages; the compositors receiving fifty cents an hour for the time employed.

Nor is this all. It has been represented to the committee that this society not only fixes the pay of its own members, and forbids any man to work at lower rates, but it further protects its members from competition by prohibiting boys from learning the art of printing, and by prescribing the number of apprentices which any office shall employ; the penalty of disobedience to its commands being the immediate withdrawal of all its members from the offending establishment, leaving it without the means of continuing its business.

The committee append a communication made in behalf of the memorialists on this point, marked B, and the views of the Congressional Printer thereon, requested by the committee, marked C.

The memorialists, in the statement made orally by their chairman before the Committee on Public Printing, alleged that the estimates of the cost of printing public documents as published in the annual report of the Congressional Printer were incorrect. This allegation was also informally made by other parties, and copies of public documents were submitted to the committee, with calculations, which, had they been correctly based, would have shown that the Congressional Printer was greatly in error. The committee, to test the correctness of these allegations, submitted two of the public documents in question to the memorialists, with the request that they would estimate the cost of the paper used in printing each, and furnish the committee with the calculations by which they arrived at a result. This request was complied with, and the committee then submitted the calculations furnished by the memorialists to the Congressional Printer, with the request that he would show wherein they differed from the calculations upon which he had based the estimates in his annual report of the cost of paper used in printing the documents in question.

These two sets of calculations, respectively marked D and E, are appended to this report. In one instance the chief clerk of the Congressional Printer had made an error, as clearly appeared from the original figures in the minute-book kept by him and submitted to the inspection

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Nor is this all. It has been represented to the committee that this society not only fixes the pay of its own members, and forbids any man to work at lower rates, but it further protects its members from competition by prohibiting boys from learning the art of printing, and by prescribing the number of apprentices which any office shall employ; the penalty of disobedience to its commands being the immediate withdrawal of all its members from the offending establishment, leaving it without the means of continuing its business.

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These two sets of calculations, respectively marked D and E, are appended to this report. In one instance the chief clerk of the Congressional Printer had made an error, as clearly appeared from the original figures in the minute-book kept by him and submitted to the inspection

of the committee. But the estimates of the Congressional Printer appeared to have been fairly made, while the calculations of the memorialists were based on erroneous suppositions as to the quantity, the quality and the consequent cost of the paper used.

The Congressional Printer, in his reply, has made a statement concerning the plan of estimating the value of printing and binding done at the Government Printing-Office, which merits consideration.

The committee, while engaged in the examination of the alleged mismanagement of the Government Printing-Office by the memorialists, have been led to the opinion that additional legislation is desirable to regulate the prices paid for labor, to enable the Congressional Printer to have work executed by contract whenever he shall find it for the interest and convenience of the Government so to do, and to fix an annual list of prices for the printing and binding done for the Executive Departments and the Judiciary.

The committee report the accompanying bill.

APPENDIX.

A.

TREASURY DEPARTMENT,
January 13, 1873.

DEAR SIR: Your favor of the 14th ultimo, referring to a reported statement of the Secretary of the Treasury, to the effect that the records of the Department betray the fact that it cost as much money under the old system of having work done at private establishments to supply the New York custom-house for one year with blanks and blank books as it now costs the Government for a like period for all the custom-houses in the United States, was duly received. A reply has been delayed in order to obtain an accurate account of the cost of stationery, &c., furnished to the custom-house, New York, by private parties previous to the adoption of the present method of supplying outside officers of the Treasury with books, blanks, and stationery.

It is impracticable to obtain the exact cost of books and blanks as separate and distinct from other articles of stationery, the bills paid being all included under the general head of stationery.

From a statement furnished me by the Commissioner of Customs, it appears that the cost of stationery and printing at the port of New York during the year ended June 30, 1867, was \$38,367.23; year ended June 30, 1868, was \$41,578.52; year ended June 30, 1869, was \$48,409; showing an average increase each year of about \$5,000. This increase is to be attributed to the increase in the business of the port. At the same rate, the cost of stationery and printing at New York, if the old arrangement had been continued, would be, for the fiscal year ended June 30, 1872, \$63,409.

No account of the money-value of books and blanks prepared at the Government Printing-Office, and sent to customs-officers, was kept in the Department until recently. On the 1st of July last books for this purpose were opened, and the value of books sent out, according to estimated prices furnished by you, has been kept. During the six months ended January 31, 1872—

The value of books and blanks supplied to the custom-house, New York, was.	\$20,786 66
The value of same sent to all other ports.....	16,762 14

Total for six months.....	37,548 80
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As a large proportion of this amount was for books and blanks to be used during the present year, I think it will be fair to estimate that not more than \$10,000 more will be required to keep the custom-houses supplied during the next six months. The total cost of stationery for all custom-houses during the last fiscal year was \$26,514.69. Of this amount, New York is charged with \$9,820.29.

In estimating the advantage to the Government of the present system of furnishing books and blanks, it should be borne in mind that the quality of the work done at the Government Printing-Office is at least 50 per cent. better than that done at private establishments.

The statement of the Secretary referred to by you was doubtless based upon the fact, well understood in the Department, that a system of overcharging and dishonesty in making blank books by putting in twelve or fourteen sheets to the quire, had long been practiced by stationers, when the Government was the purchaser. As an instance, it may be mentioned that a stationer in New Orleans charged \$72 each for warehouse-ledgers. The same book is made at the Government-Printing Office at a cost of \$24.30 each.

Very respectfully,

J. H. SAVILLE,
Chief Clerk.

Hon. A. M. CLAPP,
Congressional Printer.

B.

WASHINGTON, D. C., February 5, 1874.

To the Committee on Printing of the United States Senate:

The undersigned most respectfully ask your attention to the following statement of facts, as showing some reasons why your honorable committee should take action look-

ing to a redress of the grievances complained of by the employing printers of Washington in a memorial lately presented and referred to your committee.

The special grievance now more particularly set forth is caused solely by the operation of the law under which the rates of compensation and hours of labor are fixed at the Government Printing-Office.

The law under which the compositors and pressmen at the Government Office are paid reads as follows, (see section 61, Revision of United States Statutes, title 48:)

"The Congressional Printer shall not be allowed credit at the Treasury for payments on account of services rendered in the Government Printing-Office at higher prices than those paid for similar services in the private printing and binding establishments of the city of Washington."

This law, upon its face, is certainly fair and just. But how does it work?

The rates of pay and hours of labor in private printing-establishments in the city of Washington are fixed by the Printers' Trade Union, (Columbia Typographical Union No. 101,) a branch of the National Printers' Union. The Union in Washington requires all working printers in its jurisdiction to become members thereof. Now, the employés of the Government Printing-Office control the Typographical Union; and the method of fixing the rate of compensation in the Government establishment is this: The Union enacts that, from and after a certain date, the hours of labor and rates of pay shall be thus and so. Although a large minority—being employés in private establishments—may be opposed to any change in prices or hours, they, as members of the Union, are bound to maintain the action of the society, and they force the private employés to accede to their demands, or a strike is the consequence.

(It has been the case that a strike for increase of compensation or a decrease in the hours of labor has taken effect as to private establishments, while the employés of the Government Office continued to work at the previous rates—*under protest*.)

After the private employers have been forced to succumb to the demands of the Union, *then* the Superintendent of Public Printing is informed that there has been an increase in the rates of pay outside, and he, under the present law, must also grant the additional compensation.

Thus the employés in the Government Printing Office (being a majority of the Typographical Union) not only (in effect) fix their own wages, but also the wages of the employés of the private printing-establishments of the city of Washington.

Again: The rates of pay for day's work and for piece-work are very disproportionate. In this is palpably seen the handiwork of the Government employés. This difference affects the Government Office more than any other in Washington. It employs a large majority of its force by the day. If you will take the trouble to examine the report of the Congressional Printer for the current session, you will perceive that the sums paid to compositors working by the day (where anything like full time has been made during the year) are much greater in all instances than the sums paid to any of the piece-hands. The present pay is 50 cents per hour, or \$4 for a day of 8 hours, and 60 cents per 1,000 ems for composition by the piece. Six thousand ems of type (including the distribution of letter and correcting of proof-sheets) is considered a very fair day's work of 10 hours; therefore 5,400 ems would be the amount composed in 8 hours. Thus the piece-hand receives but \$3.24 per day, while the day-hand receives \$4, although in a large majority of cases (if not in all) doing no more work—*generally less, if of the same class*.

This demonstrates that if the price paid for piece-work is fair, (and it is fully 20 per cent. *above* the average rate paid in the principal cities of the United States, as shown by a schedule below,) the Government is paying a portion of its employés in the Government Printing-Office 76 cents per day more than they are worth. This may be a small matter to the Government, but it re-acts with great force to the detriment of the private employer.

The greater cost of type-setting in Washington over most of the cities in the United States (there being but one city where it is as much) is shown by the following statement; (and again your attention is called to the marked difference between the increased percentage in week and piece work:)

Albany	week, 66 per cent. ; piece, 20 per cent.
Baltimore	week, 66 per cent. ; piece, 20 per cent.
Boston	week, 75 per cent. ; piece, 28 per cent.
Buffalo	week, 83 per cent. ; piece, 70 per cent.
Charleston, S. C.	week, 50 per cent. ; piece, 20 per cent.
Chicago	week, 50 per cent. ; piece, 13 per cent.
Cincinnati	week, 50 per cent. ; piece, 20 per cent.
Philadelphia	week, 50 per cent. ; piece, 20 per cent.
San Francisco	week, 25 per cent. ; piece, 00 per cent.
Saint Louis	week, 50 per cent. ; piece, 33 per cent.

Average increase in week-rates, over 56 per cent. ; in piece-rates, 24 per cent.

The above figures are substantially, if not exactly, correct.

These facts are presented in the hope that in your wisdom you may devise some amendment to the present law whereby the printers of Washington engaged in private enterprise may be emancipated from the control of the employés of the Government establishment, and be thereby enabled to retain domestic work at home, which is not now the case in very many instances, owing to the inability to procure labor at reasonably near its cost in neighboring cities.

The weekly pay in this city in 1863 was \$14. The increase between that time and 1868 or 1869 has been frequent and great—\$16, \$18, \$21, \$24, and lastly 8 hours a day at same pay, equal to \$30 per week. This last increase is confidently claimed to have been brought about solely for the benefit of the Government Printing-Office employés. *There is no other city in the country where the hours of labor constituting a day are so few and the pay per day so great in printing-offices.*

A change in the law fixing the compensation of the employés at the Government Printing-Office at a certain percentage above (or at) the average rates current in Baltimore, Philadelphia, or New York, would, we think, be a more equitable method than the present, and would result in a large saving to the Government, which latter consideration alone should, it is respectfully submitted, have weight in the present financial condition of the country.

JOS. L. PEARSON.

C.

OFFICE OF THE CONGRESSIONAL PRINTER,
Washington, March 3, 1874.

DEAR SIR: I have the honor to acknowledge the receipt of a communication addressed to you by Mr. J. L. Pearson, with a request, through the clerk of printing records, that I shall make any comments on the alleged facts that may be suggested by its perusal.

The special grievance set forth by the writer of the communication referred to me is, no doubt, a matter of grave importance to the employing printers of this city. The passage of a law fixing the hours of labor, and the action of the Printers' Union in deciding upon terms of compensation that have been acceded to by employing printers, are the real causes of the grievances complained of. It may be true that the printers employed in the Government Printing-Office, as is alleged, do control the Printers' Union, and thereby establish the rates of compensation for this locality; but, after all, the employing printers are not compelled to accede to these terms. It is for them to decide whether or not their interests counsel them to submission thereto. On this point I have no further comments to make.

I would, however, say that I am an unbeliever in the beneficence of any law establishing the hours of labor in this or any other office. In my judgment, that question should be at all times and under all circumstances a matter of negotiation and accommodation between employers and employed. I would suggest that the only way I see for the employing printers in this city to extricate themselves from the difficulty of high rates of compensation is to resist the demands of the Printers' Union and cease to furnish a pretext for demanding high rates from the Government Printing-Office. It is no wish on my part to keep up high rates of compensation. If composition costs too much now at union rates, then it becomes a question for all employers, whether they be private individuals or the Government, to decide whether or not they will yield to the behests of the union. So far as the Government Printing-Office is concerned, without some law of Congress as his defense and justification of action, the Congressional Printer is left as other employers, to be controlled by the necessities of his office in procuring labor. A law applying to this office which shall limit the Congressional Printer to a maximum price of labor, either by the day or piece, would fortify that officer in any effort he might make to change the rates in this office. Under such circumstances the employing printers outside this office in this city would not be embarrassed by its action. This might precipitate a collision between this branch of the public service and the Printers' Union, in which the Government must take the chances of the issue the same as others in the same line of business.

In commenting upon the question of labor and compensation at the Government Printing-Office, and the inequalities that exist between the pay of piece and day hands, your memorialist labors under a misapprehension, which is very naturally allied to ignorance as to the facts of the case. He does not seem to understand how the office is worked. He evidently is ignorant of the fact that most of the work that is counted as fat is done by the day. Take, for instance, the job department, where, if the work

was done by the piece, the bills of the compositor would far exceed \$4 per day. The Patent-Office work is also done by the day, and each compositor engaged thereupon is required to make a full showing of \$4 each 8 hours, at 60 cents per 1,000 ems, or he ceases to retain his position on the work. The bill-room, which is regarded as a fat situation, is also worked by the day. In this branch of the office, if the compositors were engaged by the piece their earnings would average each more than \$5 for each 8 hours employed. Much of the labor in that department is necessarily done at night, while the compensation is only \$4 for each 8 hours engaged, whether the service be performed at noonday or midnight.

Then, again, the composition in the document-room, where a large proportion of the tabular work occurs, is done by the day. On this work it is a common occurrence for compositors to earn the Government, at the fixed rates of composition, from \$8 to \$10 per day. Indeed, compositors engaged on this work have been known to earn each day, for months, an average of more than \$16 per day at regular rates of composition, and for this service they received only \$4 each day. I think that I may safely say the entire composition for the office, under the existing arrangement of the work, does not cost the Government an average of 50 cents per 1,000 ems.

The allegation made by your memorialist that the pay for the day and piece hands is disproportionate is based upon a want of proper knowledge of the working of the office. He seems to be ignorant of the fact that the day-hands are called upon during sessions of Congress to work more hours than the piece-hands. Hence the disproportion referred to. The piece-hands receive full compensation for all they earn, at 60 cents per 1,000 ems; while the day-hands work more hours, but are paid for night-work the same as for day-work, \$4 for each 8 hours, except in cases where the work extends after midnight, and then 50 per cent. is added.

While I am disinclined to discuss at much length the grievances of the employing printers of this city, for the reason that I may not properly appreciate them, it may not be out of the way to allude to the fact that, in the vigor and range of their enterprise, they do not neglect to place highly remunerative prices upon the product of their offices, whether the service rendered be in the way of book and job work or newspaper advertising, even at the present rates of composition. This is especially so in the way of advertising, which, according to my experience, is fully 50 per cent. above the prices charged for like service in the cities of New York, Philadelphia, and Baltimore. This fully compensates for the difference in composition between this city and the cities named, according to the statement of your memorialist.

If my information is correct, the government of the District of Columbia has been charged for lengthy advertisements at the rate of \$1 for four lines for each insertion; under which charges these advertisements have, in a single instance, realized the moderate sum of more than \$20,000 to one paper. If this be so, it would seem to afford a handsome profit to the publisher, even if he pays at the rate of 60 cents per 1,000 ems for the composition.

Then, again, it should be borne in mind that these publishers have secured the passage of a law which compels the Government to advertise all proposals, &c., in all three of the daily papers here, at such rates as their proprietors may be pleased to charge. This is an advantage that publishers nowhere else enjoy, and which must prove richly compensating even at existing prices of composition.

The Government can afford and should pay to the printers and others engaged in its service a fair compensation. If 60 cents per 1,000 ems, or \$4 per day for compensation, is in excess of what is just, then it has the power to reduce the price and seek the service at a more equitable compensation. A judicious statute bearing upon this branch of the public service—one that is based upon the principle of equivalents—should be enacted. Such a measure might, perhaps, bring the printing interests of the Government in collision with the Printers' Union, and I know of no power in the United States so likely to cope successfully with that organization as that which enacts and administers its laws.

I am, very respectfully,

A. M. CLAPP,
Congressional Printer.

Hon. H. B. ANTHONY,
Chairman Committee on Public Printing.

D.

Formula for octavo, (the size of Mis. Doc. reports of committees, &c.):

Rule.—Multiply the number of pages by the number of copies, then divide by 32, and add 2 per cent. to the product for waste; then divide by 500, and the answer will be reams and sheets.

First example, (see page 23, Superintendent's report, third article from bottom of page:)

526 pages, 1,200 copies—

$$\begin{array}{r}
 1200 \\
 526 \\
 \hline
 7200 \\
 2400 \\
 6000 \\
 \hline
 32)631200(19725 \\
 32 \\
 \hline
 311 \\
 288 \\
 \hline
 232 \\
 224 \\
 \hline
 80 \\
 64 \\
 \hline
 160 \\
 160 \\
 \hline
 500)20120(40 \\
 2000 \\
 \hline
 120
 \end{array}$$

$$\begin{array}{r}
 19725 + 2 \text{ per cent.} \\
 395 \\
 \hline
 \end{array}$$

$$\begin{array}{r}
 500)20120(40 \\
 2000 \\
 \hline
 120
 \end{array}$$

Equal to $40\frac{1}{2}$ reams.

Price charged, \$688.28, equal to \$17.10 a ream; cost, 53 lb. calendered, average, \$8.33 a ream.

Second example, (same book, same page, last item:)

526 pages, 1,650 copies—

$$\begin{array}{r}
 1650 \\
 526 \\
 \hline
 10900 \\
 3300 \\
 8250 \\
 \hline
 32)868900(27154 \\
 64 \\
 \hline
 228 \\
 224 \\
 \hline
 49 \\
 32 \\
 \hline
 170 \\
 160 \\
 \hline
 100 \\
 128 \\
 \hline
 500)27697(55 \\
 2500 \\
 \hline
 2697 \\
 2500 \\
 \hline
 197 \text{ call it } \frac{1}{2}
 \end{array}$$

$$\begin{array}{r}
 27154 + 2 \text{ per cent.} \\
 543 \\
 \hline
 \end{array}$$

$$\begin{array}{r}
 500)27697(55 \\
 2500 \\
 \hline
 2697 \\
 2500 \\
 \hline
 \end{array}$$

197 call it $\frac{1}{2}$

Equal to $55\frac{1}{2}$ reams.

Price charged, \$513.99, or \$9.26 a ream; cost, 45 uncalendered, average, \$6 a ream.

For quarto, divide by 16 instead of 32, and proceed as above.

Respectfully,

JOHN G. JUDD,
Chairman Committee.

E.

OFFICE OF THE CONGRESSIONAL PRINTER,
Washington, March 23, 1874.

SIR: I have received your letter, inclosing the formula of Mr. Judd for obtaining the cost of paper used in printing public documents, and citing two examples by which he makes it appear that the charges for paper in the report of the Congressional Printer are incorrect, and requesting me to give you the figures by which I arrived at those charges, with the reasons for any variations between my figures and those of Mr. Judd.

The "rule" established by Mr. Judd for ascertaining the amount of paper in each volume is arithmetically correct, but differs from that which has been followed at the Government Office since its organization and is generally in use among printers. It is to estimate as the number of signatures, rather than pages, throwing in or taking off extra pages. The "rule" allows 2 per cent. for waste, which may answer for newspaper-work, but the rule of the Government Office has been to allow 3 per cent., which (especially when the Bullock press is used) is not too much. Mr. Judd has also, in one of his examples, omitted the waste-leaves for binding, and in both he has omitted the tinted paper used for printing the illustrations.

In charging the cost of paper Mr. Judd has adopted the price for which the contracts were awarded that are published in the same report, and he has also figured as uncalendered 45-pound paper for one "example," when calendered 53-pound paper was used.

The contracts for paper are awarded by the Joint Committee on Public Printing late in January of each year. As it would not be desirable to have the office destitute of paper, there is generally enough of the previous year's supply on hand to use until the new contractors can manufacture and deliver what is ordered of them, which is often ten or twelve weeks. It thus happens that of the paper used in a year some has been purchased under the contracts of the previous year, and the remainder under the contract of that year. An average is consequently made of the cost and probable quantity used under each contract, upon which the figures of the estimates are based.

In one of the "examples," that for 1,200 copies, there is an error of \$400 in the arithmetical calculations of the Government Office, which has already been explained to the chairman of the Senate Committee on Printing, as shown by the original figures. It was in the hurried footing-up, and the error should not be regarded by the memorialists as unpardonable, as Mr. Judd has in one of his "examples" also made an error in figures. With these explanations the calculations are given:

First example, Agricultural Report, 526 pages, 1,620 copies—

1650 copies.		
526 pages.		
—		
9900		
3300		
8250		
—		
32)867900(27122 sheets net.		
64	3 per cent.	
—		
227	81366	
224		
—		
39		27122 sheets net.
32		813 sheets, three per cent.
—		
70		500)27935(55 17 $\frac{1}{2}$ reams.
64		2500
—		
60		2935
		2500
		—
	25 sheets to quire	435(17
		25
		—
		185
		175
		—
		10

Fifty-three pound calendered printing-paper was used for printing example No 1, on 1871 and 1872 contracts, at 16 $\frac{1}{2}$ of a cent per pound, or \$8.90 per ream.

\$8 90
 $55\frac{17}{20}$ reams.

44 50
 445 0
 7 57 for 17 quires.

497 07
 14 56 for $1\frac{14}{20}$ reams of tinted paper.

511 63

Second example, Agricultural Report for 1872, 1,200 copies, 526 pages.

1200 copies.
 526 pages.

7200
 2400
 6000

32)631200(19725 sheets net.
 32 3 per cent.

311 591 75
 288

232
 224

80

64

160

160

19725 sheets net.
 592 3 per cent.

500 sheets to ream)203.17(40 reams.
 2000

25 sheets to quire)317($\frac{12\frac{3}{4}}{20}$

25

67

50

17

40 $\frac{12\frac{3}{4}}{20}$ reams for text of book.

1 $\frac{4}{20}$ reams for waste leaves for binding.

41 $\frac{16\frac{3}{4}}{20}$ reams, 45-pound paper.

\$6 40

41 $\frac{16\frac{3}{4}}{20}$ reams.

6 40

256 0

262 40

5 36 for $16\frac{3}{4}$ quires.

267 76

16 26 for $1\frac{18}{20}$ reams tinted paper, for illustrations.

284 02

As some criticism has been made upon the system heretofore respected for charging, in the Government Printing-Office, work against the Departments, it is but just that the following explanation should be made :

When the present Congressional Printer entered upon his duties, April 15, 1869, he found in the office a system of charging up the work executed therein for the Legislative, Executive, and Judicial Departments of the Government, which was based upon the prices established in the law of 1852, and which had been continued for the purpose of showing the difference between the cost of the public printing under the former system and when done by the Government itself at the bare cost of material and labor therefor. Without close examination, he accepted and adopted the schedule as he found it as his guide in charging up the products of the labor and material applied thereto. Indeed, it did not seem to be important to make these charges except to show how well the present system worked as against the contract-system, and to present a schedule of the work printed for Congress, in accordance with the requirements of the statute.

The more important accounts were those with the annual appropriations made for the office :

Table No. 3 of the Congressional Printer's report, showing the disbursements on account of the public printing; Table No. 4, showing the disbursements on account of the paper for the public printing; Tables Nos. 5 and 6, showing the disbursements on account of the public binding and lithographing and engraving for the Senate, House of Representatives, and the Supreme Court of the United States.

These are all the accounts that relate to the finances of the office, except the salaries of the Congressional Printer, his clerks, messenger, and the contingent expenses thereof; and up to the passage of the law making specific appropriations of money, values of printing, &c., for the several Departments, all others had been regarded as memorandums for reference and comparison.

When the law of July 1, 1873, went into effect, it did not occur to the Congressional Printer that the schedule of prices that he had found in the office, and had respected in keeping account of the products of labor and material used, was not adapted to this new order of things; and the accounts ran on as heretofore for some months, when the question was raised as to the justice of these prices, and his attention was called thereto.

He at once saw that this schedule was liable to produce results that would incommode the Departments, and immediately revised it, bringing the rate of prices down as approximately as possible to the absolute cost of the work. All accounts with the Departments have been or are being made to conform thereto, so that ample justice will be done to all when the end of the fiscal year shall come.

Under the inadvertence of not changing and adapting the schedule of prices to this new law, the Departments would have been incommoded had the error been continued, but the Government would really have paid no more for the work than the absolute cost of the labor and material used therefor. To illustrate the operations of the old system, I would call attention to the forty-third page of the Congressional Printer's last report, which presents an aggregate statement showing the earnings and disbursements for the year ending September 30, 1873.

By that it is clearly shown that the earnings of the office were \$2,528,959.04, while the expenditures were only \$2,264,146.93, thereby showing that the office, under its schedule of prices, had earned \$264,812.11 in excess of its expenditures.

A misapprehension seems to have obtained in the public mind in relation to the matter of keeping accounts with the several Departments for their printing and binding. The idea has been promulgated that the Congressional Printer does the printing and binding ordered, makes out his account, and collects the money therefor, when in fact not one cent of money passes between them. The Congressional Printer draws the money necessary to do the public printing and binding directly from the Treasury, not on his own vouchers, but on the vouchers of those who have performed the labor and furnished material therefor. The aggregate appropriations for the printing, binding, &c., for each year for the entire use of the Government of the United States are placed to the credit of the Congressional Printer. He makes his drafts thereupon, accompanied by the evidences that the material charged for had already been delivered and the labor to be compensated had already been performed. Of the sum thus placed to his credit he is instructed by Congress to furnish a specific sum in printing and binding for Congress and the several Departments of the Government.

This is done, delivered, and charged for, to any amount not in excess of the sum named in the appropriation bill, and which is placed to their respective credits on the books. This covers the case entirely.

I am, sir, very respectfully, your obedient servant,

H. H. CLAPP,
Chief Clerk.

Hon. H. B. ANTHONY,
Chairman Senate Committee on Public Printing.

SECTION 1. ALL LEGISLATIVE POWERS HEREIN GRANTED SHALL BE VESTED IN A SENATE AND HOUSE OF REPRESENTATIVES.

SECTION 2. THE HOUSE OF REPRESENTATIVES SHALL BE COMPOSED OF MEMBERS ELECTED BY THE PEOPLE.

SECTION 3. NO SENATOR SHALL BE A MEMBER OF ANY OTHER BRANCH OF THE NATIONAL GOVERNMENT.

SECTION 4. THE SENATE SHALL HAVE THE SOLE POWER TO CONFIRM OR REJECT NOMINATIONS.

SECTION 5. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 6. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 7. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 8. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 9. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 10. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 11. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 12. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 13. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 14. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 15. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 16. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 17. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 18. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 19. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 20. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 21. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 22. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

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SECTION 26. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 27. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 28. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 29. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 30. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 31. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

SECTION 32. THE SENATE SHALL HAVE THE SOLE POWER TO IMPEACH AND TRY JUDGES.

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1874.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 690.]

The Committee on Pensions, to whom was referred the petition of Thomas Smith, late a private of Company E, First Michigan Light Artillery Volunteers, have considered the same, and make the following report:

Petitioner alleges that he was enrolled and mustered into the service, at Detroit, Mich., in Company E, First Michigan Light Artillery Volunteers, December, 1861, for three years, and was wounded at the battle of Shiloh by the fragment of a shell, which seriously injured his left knee, for which he was treated for several weeks at the hospital at Iuka, Miss., and then sent to the general hospital at Nashville, Tenn., where he remained until July, 1862, when he was discharged by reason of disability; that he re-enlisted in Battery A, First Regiment Kentucky Artillery, as farrier, in September, 1862, at Louisville, Ky., but did duty as a soldier; was wounded in the head by a piece of shell at Perryville, Ky., October 8, 1862, which, however, did not prevent him from doing duty; that he was again wounded at the battle of Stone River, Tennessee, where, upon very rough ground, his horse fell upon him, severely injuring his left leg, his head and spine, resulting in his disability to do duty, on account of which he was discharged July 18, 1863. In August thereafter he enlisted in the Veteran Reserve Corps, at Louisville Ky., for three years, and was discharged in August, 1866, at Columbus, Ohio, having been on crutches all the time after his last enlistment; and, finally, on November 15, 1871, his leg was amputated above the knee at the Soldiers' Home, Detroit, Mich.

Petitioner applied for a pension after his discharge in 1863, when he was examined by Dr. Colescott, examining surgeon at Louisville, Ky., who certified, on July 18, 1863, that petitioner was not, in his opinion, incapacitated for obtaining his subsistence by manual labor from the cause stated, *i. e.*, injury of the left leg from the alleged shell-wound and fall of horse; that *varicose veins*, being largely developed in both lower extremities, must have existed prior to enlistment.

Dr. H. R. Payne, surgeon Tenth Illinois Infantry and medical director pioneer corps, on issuing the certificate of disability for discharge of petitioner on April 18, 1863, at Murfreesborough, Tenn., certified that petitioner joined the First Battery Kentucky Volunteer Artillery in the field near Perryville, Ky., October 9, 1862, and had been on sick report, unfit for duty, from the 13th of January, 1863; that he was incapable of performing the duty of a soldier because of *varicose veins*; the

disease extending over both lower extremities, and to such an extent that rupture of the veins was liable to occur at any time, expressing the opinion that the disease existed, to some extent, before entering the service.

Dr. Hy. L. Joy testifies that he examined petitioner when recruited for Company E, First Michigan Light Artillery Volunteers, and that he was then a sound, healthy man. Peter de Vries, the captain under whom petitioner served, corroborates his statement relative to the service and injury therein while attached to his command. He states that there was no surgeon with the battery at the time petitioner was injured at Shiloh, and he being unable to march, was left at the hospital at Iuka for treatment. Patrick Gartland and Cornelius Sullivan, both of Montgomery County, Ohio, testify that they knew petitioner personally for some time before he entered the service, and that he was then, to the best of their knowledge and belief, a sound and healthy man.

The foregoing evidence was forwarded to the Adjutant-General November 22, 1872, for the purpose of having the record changed, so as to relieve the case of the bar imposed by the twenty-fourth section of the act of March 3, 1873, but it was returned to the Pension Bureau without comment or change of record. The case was then appealed to the honorable Secretary of the Interior, and after careful examination returned to the Commissioner of Pensions undecided, the Secretary saying he could not, without further light thereon, determine the merits of the case, and suggesting its reference to the medical referee for a comprehensive opinion of the whole case, and directing then a resubmission to the Department.

The case was not submitted to the medical referee because of his well-known adverse opinion in such cases, but was referred to Dr. Hood, upon whose report the case was again submitted to the honorable Secretary of the Interior, and was decided against petitioner. The opinion of Dr. Hood is not found among the papers, but the following quotation from it appears in the final opinion of the honorable Secretary of the Interior, to wit: "The varicose condition of the veins of the legs existed before enlistment;" and "that in all probability the amputation of the leg was made necessary by the prior existence of this condition."

There are several affidavits referred to in the attorney's brief, which are not found among the papers on file in the Pension Office, one by the officer in command of the battery to which petitioner belonged, testifying to the fall of petitioner's horse at the battle of Stone River, and the injury which he sustained by the fall.

There are some discrepancies in the statements touching the times and places of enlistments; but from the best information to be gathered from the papers, petitioner seems to have been *transferred* from the First Michigan Light Artillery to Battery A, First Regiment Kentucky Artillery, instead of being discharged and re-enlisting, as stated in his petition. The medical records furnish no evidence of petitioner's treatment while in hospital, and his re-enlistment after the many and severe injuries which he received at Shiloh and Stone River is difficult to reconcile, except upon the supposition that he was recruited as a farrier, as he states, because he seems to have been unfit for duty as a soldier as early as July, 1863, on account of the condition of his legs, independent of the alleged disabilities contracted in the service otherwise.

Petitioner is now an inmate of the National Home for Disabled Volunteer Soldiers, Dayton, Ohio; and the surgeon of the home, Dr. C. McDermott, makes the following certificate, dated March 2, 1874: "That Thomas Smith, private, late of Company E, First Regiment Michigan Light Artillery Volunteers, was admitted to the home on the 10th day

of July, 1868, and has been under the care of the medical officers of the same from that time to the present date except while absent on furlough in 1871 and 1872. His disability at the date of admission, as appears by the records of this home, was due to injury of the knee, back, and head, from his horse falling with him, as he states, at the battle of Stone River. He has lost the sight of left eye, has severe curvature of the spine, and had his leg amputated (left leg) from the injury specified, which he alleges to have contracted in the service of the United States. His present condition is lameness from loss of left leg above the knee, deformity from angular curvature of spine, and loss of sight of left eye. There are scars upon his head of a severe injury, over the left eye."

The case is rather an embarrassing one; it was so to the Commissioner of Pensions and to the honorable Secretary of the Interior, and is so to the committee. The surgeon who prepared the certificate of disability for discharge of petitioner in 1863, and the examining surgeon at Louisville, Ky., the same year, as well as the medical referee to whom the case was submitted in 1873, all concur in the opinion that the varicose condition of the veins in petitioner's legs must have existed prior to his enlistment, and the latter gave the further opinion that the amputation of the leg was probably made necessary by the prior existence of that condition; yet, on the other hand, the surgeon who examined petitioner on his muster into the service in 1861, and several other persons, testify to his sound bodily condition at that time.

While it must be admitted that the testimony does not clearly show that petitioner's disability was contracted in the service, yet neither does it show the contrary. The surgeons who examined him did so after he had been two years in the service, and twice severely wounded, besides the hardships and fatigues incident to the service in that department during the twelve months prior to his discharge. There may be some doubt about the perfect soundness of petitioner's lower extremities when he entered the service; at the same time, there can be little doubt that he saw hard service, and received wounds and injuries therein, to which the disability under which he labors may be partially if not wholly referred.

The committee therefore report the accompanying bill and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

APRIL 14, 1874.—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

REPORT:

[To accompany bill H. R. 2090.]

The Committee on Finance, to whom was referred House bill No. 2090, submit the following report :

Jacob Harding in his petition, to the truth of which he has duly sworn, says that, on November 23, 1866, he was appointed temporary inspector of the distillery of Messrs. Gordon & Co., at Paris, Ill., in the seventh collection-district of said State; that on November 30, 1866, he was appointed permanent inspector of said distillery by the Secretary of the Treasury; that after being duly qualified he continued to faithfully perform the duties of said office until March 18, 1867.

Petitioner further states that there is still due him for such service from February 1, 1867, to March 18, 1867, the sum of \$195, being for thirty-nine working-days, at \$5 per day; that his account for services was made out according to law, and approved by the assessor of the district; that the amount was assessed against the distillery and placed in the hands of the collector of the district for collection but was never collected.

Petitioner further states that on April 16, 1870, he was directed by the Commissioner of Internal Revenue to send his monthly bills, sworn to by himself, and certified by the former assessor of the district, that they might be considered and adjusted, which directions he complied with; that he received a letter from the Hon. R. W. Talyer, Comptroller of the Treasury, dated September 30, 1870, stating that said claim had been considered and disallowed by that office, there being, in his opinion, no appropriation out of which the same could be legally paid from the United States Treasury.

The Commissioner of Internal Revenue, in a letter dated January 30, 1874, says :

The records of this office show that Mr. Jacob Harding has an equitable claim against the Government for the sum of \$195, as his compensation for services rendered as inspector of the distillery of Messrs. Gordon & Co., at Paris, Ill., at \$5 per day for the working-days from February 1, to March 18, 1867, inclusive, the date of his delivery of the keys of their warehouse to W. Alexander, deputy collector, in compliance with the written instructions of Collector W. T. Cunningham, seventh district, Illinois, dated March 10, 1867.

Mr. Harding's claim, therefore, is of such a nature that it cannot be paid out of the appropriations made for internal-revenue purposes, as the law provided that those inspectors should receive their salary from their collectors, it being assessed and collected from the distillers. In this case it was assessed, but not collected; and it appears that, owing to the insolvency of the distillers and of their sureties, it cannot now be collected from them.

Default of payment growing out of no negligence of petitioner, but through failure of collection, your committee recommend the passage of the bill for the relief of the said Jacob Harding.

IN THE SENATE OF THE UNITED STATES

C

April 11, 1874—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

REPORT:

The accompanying bill H. R. 2000.

The Committee on Finance, to whom was referred House Bill No. 2000, and the following report:

Jacob Harding in his petition, to the truth of which he has duly sworn, says that on November 22, 1869, he was appointed temporary collector of the district of Alaska, located at Oot. at Fairbanks, in the Territory of Alaska, and that on November 30, 1869, he was appointed permanent collector of said district by the Secretary of the Treasury; that after being duly qualified he continued to hold said position the duties of said office until March 18, 1871. The petition further states that there is still due him for such services from January 1, 1871, to March 18, 1871, the sum of \$100, being for thirty-one working days, at \$3 per day; that his account for services was made out according to law, and approved by the Assistant of the District; that the amount was assessed against the district and placed in the hands of the collector of the district for collection but was never collected.

The petition further states that on April 18, 1870, he was directed by the Commissioner of Internal Revenue to send his monthly bills, sworn to by himself, and certified by the former collector of the district, that they might be considered and adjusted, which directions he complied with; that he received a letter from the Hon. H. W. Tappan, Comptroller of the Treasury, dated September 30, 1870, stating that said claim had been considered and allowed by that office, there being, in his opinion, no appropriation out of which the same could be legally paid from the United States Treasury.

The Commissioner of Internal Revenue, in a letter dated January 30, 1871, says:

"The result of this office is that Mr. Jacob Harding has no legal claim against the Government for the sum of \$100, as his compensation for services rendered as temporary collector of the district of Alaska, located at Oot. at Fairbanks, in the Territory of Alaska, from January 1, to March 18, 1871, inclusive, the date of his delivery of his account to W. S. Tappan, deputy collector, in compliance with the written instructions of Collector H. T. Canby, then acting collector of said district, dated March 18, 1871."

Mr. Harding's claim, therefore, is of such a nature that it cannot be paid out of the appropriation made for internal-revenue purposes, as the law provided that there should be no such claim against the Treasury, it being well known and collected from the district. In this case it was assessed, but not collected; and it appears that the collector of the district and of the territory if cannot pay collected

IN THE SENATE OF THE UNITED STATES.

APRIL 14, 1874.—Ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

[To accompany bill S. 350.]

The Committee on Finance, to whom was referred the bill (S. 350) providing for the payment of the bonds of the Louisville and Portland Canal Company, with the substitute adopted by the House of Representatives, have considered the same, and submit the following report :

The bill passed by the Senate was introduced in view of the report made by the Secretary of the Treasury assigning his reason for not assuming control of the canal under the provisions of the act of Congress approved March 3, 1873; and it directed the Secretary of the Treasury to take possession within thirty days after the passage of the act, and made such provisions as were considered necessary for the future management and repair of the work. The substitute proposed by the action of the House differs from the bill as passed by the Senate in the following particulars:

1st. This proviso is added to the first section :

Provided further, That said Secretary shall pay no money under any of the provisions of this act, nor shall the Secretary of War take possession of said canal as authorized by the next section, until the State of Kentucky shall cede to the United States jurisdiction over the said canal, with all its property, hereditaments, and appurtenances, and relinquish to the United States the right to tax, or in any way to assess said canal, its property, hereditaments, and appurtenances, or the property of the United States that may be thereon during the time that the United States shall remain the owner thereof.

2d. In the second section the Secretary of War instead of the Secretary of the Treasury is directed to take possession of the canal.

3d. This possession is directed to be taken "as provided for by the act of the general assembly of the State of Kentucky, approved February twenty-second, eighteen hundred and forty-four, entitled 'An act to amend an act entitled 'An act to amend the charter of the Louisville and Portland Canal Company,' approved January twenty-first, eighteen hundred and forty-two,' conceding jurisdiction over said canal to the United States."

4th. The amount to be paid by the Secretary of the Treasury to the five formal stockholders acting as directors of the company is fixed at the sum of one hundred dollars to each, with interest from February 9, 1864, which he is directed to pay forthwith.

5th. The Secretary of the Treasury is required to ascertain by the 1st of July next all debts of the company other than the bonded debt,

after which time, if not presented, they shall be barred, and to submit his action in the premises in his next annual report.

6th. The following proviso is added at the close of the second section :

Provided, however, That no sum of money shall be paid by the Secretary of the Treasury on account of any claim for either city or State taxes assessed, or to be hereafter assessed, against said company, or against the said canal-property, or any of its appendages ; and no money shall be paid under the provisions of this act until all claims for said taxes shall have been released.

7th. In the third section the words " to keep the same in repair " are added in the fifth line.

8th. The Secretary of War instead of the Secretary of the Treasury is directed to ascertain the expenses, tolls, &c., fix the rate of tolls, and provide for superintendence, management, repairs, &c., and make report of receipts and expenditures.

Except the amendments referred to as the first, third, and sixth, all the others relate only to the officer who shall take possession, the time and mode of paying the stockholders and creditors other than bondholders, the making of reports, management, superintendence, repairs, and tolls of the work. To none of these do we see any objection. The first, third, and sixth, taken together, present questions which have already given rise to discussion in both Houses of Congress, and which are treated in the able report made at this session from the Committee on Commerce of the House of Representatives. (Report No. 218.)

The committee do not here repeat the history of this canal, or of the questions presented in connection with it as contained in that report, but, referring to it, proceed only to consider what is the appropriate action to be taken upon the questions presented by these three amendments. By comparing them with one another, it will be found that the first and sixth in effect assert that the State of Kentucky has no right to tax any of the property of the canal-company, and provide that no taxes imposed by virtue of such authority, if it be claimed, shall be paid, and that no money shall be paid under the act until all claims for such taxes, or the power to impose them, shall have been released.

The first amendment, however, prohibits the taking possession of said canal " until the State of Kentucky shall cede to the United States jurisdiction over said canal," while the third amendment asserts that the acts of the legislature of Kentucky, passed in 1842 and 1844, have " ceded jurisdiction over said canal to the United States." If this concession is contained in those acts, further legislation would be unnecessary, either for the purpose of ceding jurisdiction or releasing the power to tax ; for if jurisdiction has been ceded, the power to tax would necessarily have been surrendered with it. For convenience, therefore, we here insert the full text of both these acts :

AN ACT to amend the charter of the Louisville and Portland Canal Company.

SECTION. 1. *Be it enacted by the general assembly of the commonwealth of Kentucky,* That the act incorporating the Louisville and Portland Canal Company shall be, and the same is hereby, so amended that, whenever the stockholders in said company shall so direct, the board of president and directors of said company shall have the privilege of selling the shares of stock owned by individuals in said canal to the United States, or the State of Kentucky, or the city of Louisville, for the purpose of eventually making the said canal free of tolls ; or, further, to effect this object, the board of president and directors, when so authorized as aforesaid, shall hereby have the privilege of appropriating the net income arising from said canal to the purchase of said stock instead of making dividends therewith.

SEC. 2. *Be it further enacted,* That whenever said stockholders shall authorize said board of president and directors to appropriate the annual net income of said company

to the purchase of the shares held by individuals in the same, it shall be the duty of said board to advise each stockholder of the amount to be appropriated to the purchase of shares, and propose to purchase the number of shares that the sum on hand will warrant, at the lowest bid or offers. Thirty days' notice shall be given for such offers of stock to be made.

SEC. 3. *Be it further enacted*, That the maximum price at which the said board shall purchase said shares, for the first year, shall not exceed the sum of one hundred and fifty dollars per share; and when the offers of said shares are made, it shall be the duty of said board to accept the lowest offers for the number of shares which the net income of the preceding year will allow them to purchase; and no dividends will be paid on the remaining shares of said company after the ratification of this amended act. The maximum price paid for the shares purchased the first year, and six per centum per annum annually added thereto, shall be the highest price which shall be paid for the shares in each subsequent year.

SEC. 4. *Be it further enacted*, That the shares so purchased by said board shall be held in trust by it for the purposes herein declared, and shall be voted on by them at all subsequent meetings and elections, until, by the operation of the provisions of this act, all the shares standing in the name of others than the Government of the United States shall have been purchased up; and when the said shares shall have all been purchased, the same shall be transferred to the Government of the United States, on condition of said Government levying tolls for the use of said canal only sufficient to keep the same in repair and pay all necessary superintendence, custody, and expenses, and make all necessary improvements so as fully to answer the purpose of its establishment; and, further to protect and guard the interests of commerce, the superintendents or agents in charge of said canal shall ever hereafter, on the first Monday in January, annually report to the general assembly of Kentucky the amount of tolls levied and received, and of the charges and expenses incurred on the same, the general assembly reserving the right of directing the amount annually to be collected, if found too much for the purposes contemplated by this amended act.

SEC. 5. *Be it further enacted*, That it shall be the duty of said board of president and directors to report to this general assembly, on the first Monday in January of each year, the condition of the canal, and state the number of shares purchased, and the amount paid for the same: *Provided*, That nothing contained in this act shall give said company the right to increase the toll allowed by the original charter.

Approved January 21, 1842.

AN ACT to amend an act entitled "An act to amend the charter of the Louisville and Portland Canal Company," approved January 21, 1842.

Be it enacted by the general assembly of the commonwealth of Kentucky, That in the event of the United States becoming the sole owner of the Louisville and Portland Canal, the jurisdiction of this commonwealth over said canal shall be yielded up to the Government of the United States, and no annual report, as mentioned in the charter of the Louisville and Portland Canal Company, shall be required to be made by the United States, or the agent and superintendents of said canal, to the general assembly of this commonwealth.

Approved February 22, 1844.

No argument is needed to establish that the primary purposes of this legislation were, first, to make this canal a public highway, free of all tolls except such as might be necessary to keep it in operation; secondly, that to that end the United States should become its sole owner and have exclusive jurisdiction over it.

Have the United States become its sole owner? Fully to answer this question would require a repetition of the history and legislation given in the House report before mentioned. It is sufficient here to state that the plan provided by these acts was so far carried out that in 1855 all the shares other than those held by the United States had been bought in, except five shares left purposely in the hands of as many individuals, to qualify them to hold office as directors of the corporation; that, under an act of the Kentucky legislature passed in 1857 and the joint resolution of Congress passed in 1860, a mortgage was executed upon the canal-property, money was borrowed, and the canal enlarged; and that, to complete the work of enlargement, Congress, in addition to permitting tolls to be used in payment of the bonded debt to the amount of about \$500,000, has since

1868 appropriated and paid out of the Treasury additional sums amounting, in the aggregate, to \$1,278,200. Without pursuing the argument suggested by these facts, we prefer, for the purpose of establishing the relation existing between the Government and this corporation, to refer to the action of Justice Miller of the Supreme Court of the United States. When Congress in 1872 appropriated \$300,000 to the enlargement of the canal, a proviso was attached limiting the tolls to five cents per ton. The directors refused to permit United States officers to proceed with the work, alleging that, if they did, it would be an acceptance of those limits in derogation of the rights of the bondholders. Upon application by the United States officer for an injunction against the directors, while holding that the corporation still existed and could control the canal, "so far as was necessary for the purpose contemplated by the act of the Kentucky legislature and the joint resolution of the Houses of Congress," Mr. Justice Miller granted the injunction, and used this language :

But while these considerations prove the continued existence of the corporation, the validity of the contract by which they pledged the canal and its revenues for the money borrowed for its extension, and its duty to secure and protect this revenue, and to do all that may lawfully be done to prevent its destruction or diversion from that purpose, it is still true that the directors of this corporation occupy a very peculiar position, and one widely different from the directors of railroads, insurance-companies, and other corporations for private gain. The United States is the only stockholder of this corporation. The directors have really no personal interest in the corporation or its property. They are, to all purposes, what equity calls trustees without an interest, the depositaries of a naked trust. For whom do they hold this trust, and for whose benefit must they exercise it? This inquiry, though lying at the foundation of the question to be solved here, is fortunately not a difficult one. There are three parties interested deeply in this trust, and in the manner in which its duties shall be discharged, which I name in the order of the superiority of their claims rather than their importance: 1. The holders of the bonds, secured by the mortgage authorized and placed under a twofold legislative sanction, by the legislature of Kentucky and the Congress of the United States; 2. The United States, the holder of all the stock in the corporation, expending a million of dollars besides for the benefit of the canal; and 3. The public, the community, to whose use, free of all charges but those necessary to keep it in operation, it has been solemnly dedicated by the legislature of Kentucky, by the Congress of the United States, and by the action of the corporation itself, as well as by all the acts of all these parties from 1842 to the present time, so soon as the enlargement is completed and the debt thereby created discharged.

This act not only appropriates money to pay the bondholders, but expressly leaves the canal-company subject to the mortgage-lien in favor of the trustees. The United States, the holders of the stock, propose to displace, by the actual payment of the sum to which they are entitled, these five depositaries of a naked trust, and assume for the benefit of the people control of this canal, so that it shall no longer be subject to any greater charges than are necessary to keep it in operation. Such action would certainly make the United States the sole owner, and give the jurisdiction contemplated by the Kentucky act of 1844. The United States were, in equity, sole owners as early as 1855, and the five shares were retained not because of any right remaining in the State of Kentucky, but at the request of the Secretary of the Treasury, for the purpose of convenience; and the fact that an act of Congress was deemed requisite in 1860 to authorize the mortgage is of itself pregnant with meaning. If the United States were the only stockholders in the Kentucky corporation, where is the necessity for anything more than an act of the legislature of that State to authorize the mortgage.

Neither the act of 1842 nor the act of 1844 passed by the legislature of Kentucky reserves the right to tax the property of the canal-com-

pany after it shall have passed into the hands of the United States, as it was certainly intended and anticipated it would pass. If efforts have been made to impose taxes by the city government of Louisville, it must have been on the ground that, so long as the form of corporate existence is maintained, the canal is the property of the State corporation, within the jurisdiction of the State and city. We are not informed that the State has at any time imposed taxes upon it, and the claim asserted by the city of Louisville has been withdrawn. If there has been any taxation by the United States, it can only have been an income-tax upon corporate bonds—a tax not upon the property of the company, but upon the income of the bondholder. If such authority is claimed by the State of Kentucky, it has not been acknowledged by the United States; and your committee do not hesitate to assert that whatever direction is now given to take possession under the acts of 1842 and 1844 is given, not as an acknowledgment of such right, but with the express denial that any such right has existed since 1855, or will exist in the State of Kentucky.

If the United States, instead of taking stock in this canal-company, for the purpose of enabling the commerce of the Ohio River to pass around the falls, had proceeded by a direct appropriation to remove the rocks and make a channel through them, the legislature of Kentucky might with as much consistency, with its expressed desire to make that commerce free, have claimed the right to tax that channel. Such right to tax would be at war with the very purpose avowed by the acts of her legislature. All her acts of legislation, instead of asserting such a right, have looked to the end of making this commerce free from all tolls, except such as are necessary to keep up this canal. Even her act of 1872 repeats this purpose, acknowledges the ownership of the United States, and among the conditions sought to be imposed for the local advantage of Louisville, no attempt is made to include the acknowledgment of the right to tax for either State or municipal purposes. But the United States having become the owner of all the stock except the five shares held by the directors in trust, it is now due to the people who have so long been taxed by the tolls of this canal that the trust should be terminated and the absolute control of the work assumed by the Government. This possession ought not to be delayed by the refusal to pay any just debts or the amount due to the five stockholders; nor should the bondholders be required to await the action of Kentucky before either interest or principal upon their securities shall be paid; and therefore, while the direction is explicit not to pay any taxes heretofore or hereafter to be assessed, and that provision should stand, the last clause of the proviso in the second section should be stricken out of the substitute adopted by the House. The claim of the descendants of John Campbell can as readily be met in court directly by the law-officer of the United States as by directors, who are only their trustees. Possession by the United States will certainly not impair the title, which, your committee cannot refrain from saying, appears to them to be indisputable, under the decision of the Supreme Court of the United States in 1835 and the continued adverse possession since that time by the canal-company.

Even if there were defects in the original title, the argument in the House report makes it clear that, under the statutes and decisions of Kentucky, such defects have been cured by this adverse possession; and, if it were otherwise, this is no reason why possession should not at once be taken. If Kentucky shall assert the right to tax property over which she has

expressly ceded jurisdiction, that question certainly will be in no worse form to be met by the United States in possession, with the State corporation dissolved, than by continuing the mere form of such corporation to effect a great national purpose.

If the appropriation made by this act should, from any cause, fail to satisfy the corporate mortgage, and the bondholders need a remedy to collect their money when it shall fall due, that remedy can be afforded them by authorizing the Attorney-General to appear for the United States as *terre tenant pro forma* of the premises, bound by the mortgage in any proceeding to enforce it, and in all respects to conduct the proceedings as for a corporation still having due legal existence.

Your committee, therefore, conclude that the proviso to the first section of the substitute adopted by the House of Representatives and the last clause of the proviso to the second section should not be concurred in by the Senate; that the other provisions of the substitute should be concurred in; and to accomplish the purposes suggested in this report, amendments to the substitute are reported :

1st. Strike out the last proviso in the first section of the House substitute.

2d. Strike out of the proviso to the second section the words "and no money shall be paid under the provisions of this act until all claims for said taxes shall have been released."

3d. Add the following as a fourth section :

SEC. 4. That if at any time it become necessary to enforce the lien of the mortgage upon said canal-property for the benefit of the bondholders, it shall be lawful for the trustees named in said mortgage, or any other trustees who may be appointed in pursuance of the laws of Kentucky, to commence proceedings therein in any court having jurisdiction thereof, with notice to the United States as *terre tenant pro forma*, and serve process upon any officer of the United States who shall have the superintendence of said canal, whose duty it shall be to notify the Attorney-General of the United States of such service; whereupon said Attorney-General shall enter an appearance in said case, and take all necessary steps to represent and defend the interests of the United States in such proceedings, so that the same may be conducted in the same manner and with the like effect as if the said Louisville and Portland Canal Company were still in existence as a corporation.

IN THE SENATE OF THE UNITED STATES.

APRIL 15, 1874.—Considered, agreed to, and ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of G. A. Henderson, praying payment of his salary as a clerk in the Treasury Department while suspended by order of the Secretary from January 28, 1864, to May 18, 1865, have considered the same, and submit this report:

On the 28th January, 1864, Secretary Chase, by a letter addressed to Mr. Henderson, said to him: "In a sworn statement made by Henry D. Stover, dated Washington, January 27, 1864, and now lodged in this Department, you are charged with having corruptly received money in consideration of preferring in order of payment the claims of certain public creditors and others. You are therefore suspended from date. Your dismissal or restoration must be determined by the results of a thorough investigation."

The Solicitor of the Treasury examined the charges, and upon the 29th June, 1864, in a communication addressed to the Secretary, informs him that, after investigation, he concluded "no substantial ground exists for the imputations of official misconduct made against him," (Henderson.)

About this time Secretary Chase resigned his office, and was succeeded by Secretary McCulloch, who, on the 18th May, 1865, informed Mr. Henderson that he was to return to his office.

The petitioner states that, having been thus exonerated from the charges made against him, and his character entirely cleared, having made arrangements to go into some other business, he resigned his office on the 21st May, 1865; that he was paid his salary from the 18th to the 21st of May, but payment during the time he was suspended was refused, although he held himself in readiness to discharge his duties, and he now asks to be paid the sum of \$2,232.50, his salary for that time.

His petition is not verified by his own affidavit. We are not furnished with a copy of the charges made, or the evidence passed upon by the Solicitor. We cannot know what probable cause existed for his suspension; there is no recommendation from any officer conversant with the facts in favor of payment being made, and the committee do not feel at all warranted in making a precedent for paying for services not performed simply because charges deemed sufficient to authorize an officer's suspension were afterward reported to be unsustained. We ask to be discharged from the further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

APRIL 15, 1874.—Ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

The Committee on Claims, to whom was referred the memorial of Frederick A. Holden, asking remuneration for property destroyed in West Virginia, having considered the same, submit the following report:

The petitioner claims \$5,139 for his house, situated at Ceredo, West Virginia, which he alleges was destroyed accidentally by fire while occupied by the Union forces.

He estimates the house at \$4,550, and the furniture destroyed at \$587. Copies of the *ex-parte* affidavits of three witnesses are furnished, who state the value of the house as at least \$4,000.

A list of the furniture is certified to by Eli Thayer, who says he is convinced the estimate is not above the fair valuation. Neither this certificate nor the petition is sworn to.

The testimony to establish the loss of the house consists of copy of the certificate of Col. John L. Zeigler, certified by the War Department, and the copy of an affidavit of Hon. K. V. Whaley.

Colonel Zeigler certifies thus:

I hereby certify that, on the morning of Sunday, November 3, 1861, about 4½ o'clock, Frederick A. Holden's house, in or near Ceredo, Wayne County, Va., took fire and was consumed. It was taken possession of by my order some time before the said date of the fire, and was at the time of the fire occupied by me for military purposes for the United States of America as a hospital, prison, &c., for the safe-keeping of rebel prisoners, who were sick with measles, &c. It would not do to keep them in camp, as the whole regiment would be exposed to the disease.

Dated at Parkersburgh, Va., this 27th day of February, A. D. 1862.

Witness my hand.

JOHN L. ZEIGLER,
Colonel Commanding Fifth Virginia Volunteer Regiment Infantry.

True copy:

JOHN POTTS,
Chief Clerk.

WAR DEPARTMENT, July 5, 1862.

Mr. Whaley's affidavit, taken in Washington City, in 1870, is to the same effect.

Would this testimony, if the originals were before us, be sufficient to fix liability for the loss by this fire upon the United States? We think not. No testimony is taken of any officer in charge of the hospital, nor of any inmate of it, to establish the manner in which the accident occurred; whether it was by negligence of those who occupied it, by un-

avoidable accident, or otherwise. The petitioner does not state whether he was paid rent; whether his tenant, who it seems was occupying in his absence, was paid; whether any contract was made with the officers for its occupation; whether it was insured; indeed, no particulars are given beyond the statement that the house was occupied as a hospital, and was burned. In the absence of more explicit testimony we cannot report that this claim ought to be allowed, and ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

APRIL 15, 1874.—Ordered to be printed.

Mr. MERRIMON submitted the following

R E P O R T :

The Committee on Claims, to whom was referred the memorial and accompanying papers of Mrs. Ellen Call Long, of the State of Florida, have had the same under consideration, and report :

That the memorialist alleges no sufficient grounds for her alleged claim against the United States; that her allegations are not supported by any proper or sufficient testimony; the same is true of her memorial—not sworn—and several vague and unsatisfactory letters from two or three persons whose statements are not sworn, and what purports to be the transcript of a record of the district court of the United States for the State of Florida, showing that in that court in the year 1847 the United States sued the late Richard Call, and the jury rendered a verdict in favor of the defendant, and undertook to find that the United States owed the said Call—the defendant—the sum of \$8,563.37, but how the United States became or was liable to the said defendant, does not appear. The alleged claim is ancient and stale, and no reason is assigned for the long delay in setting the same up. It does not appear when said Call died, or that any administration on his estate was ever granted.

The committee ask to be discharged from the further consideration of said memorial.

REPORT
ON THE PROGRESS OF THE SURVEY OF THE
LANDS BELONGING TO THE CROWN

BY
ALFRED R. WATKINS, ESQ.,
COMMISSIONER OF THE GENERAL LAND OFFICE

LONDON:
PRINTED BY
HARRISON AND SONS, ST. MARTIN'S LANE.

REPORT

The Commission on the subject of the Survey of the Lands Belonging to the Crown, was appointed by the House of Commons in May 1871, and has since that time been engaged in a most laborious and important task.

It is the duty of the Commission to report to the House of Commons on the progress of the Survey, and to recommend such measures as may be necessary for the completion of the same. The Commission has the honor to acknowledge the assistance and co-operation of the various departments of the Government, and of the public, in the execution of the Survey. The Commission has also the honor to acknowledge the assistance and co-operation of the various departments of the Government, and of the public, in the execution of the Survey. The Commission has also the honor to acknowledge the assistance and co-operation of the various departments of the Government, and of the public, in the execution of the Survey.

IN THE SENATE OF THE UNITED STATES.

APRIL 15, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill S. 701.]

The Committee on Claims, to whom was referred the memorial of Jesse Warren and Joseph A. Moore, of Nashville, Tenn., praying compensation for a building destroyed by the Army, report:

The memorialists are carpenters and house-builders, citizens of Nashville. They were loyal men during the war. On the 4th day of October, 1859, they entered into a contract with one Henry W. Hays, to build him a brick dwelling-house, on a lot in Boyd's addition to the city, for the price of \$19,000, according to certain plans and specifications agreed on. They were to furnish, at their own proper cost, charge, and risk, all the materials, and perform all the labor; and it was expressly agreed that Hays should be at no risk or loss if the building should be injured or destroyed by fire, or otherwise, before its completion and delivery of the keys. They had proceeded to construct a brick dwelling under this contract, about one mile from the city, on the Harding turnpike. The brick-work, roofing, joist, and frame-work were finished, when, as is alleged by them, the Seventeenth Kentucky Infantry, about the 1st of March, 1863, commenced hauling away the lumber from the building, and from time to time, until the fall of 1864, portions of the building were taken by United States troops in its vicinity, until its destruction was complete, the materials being taken off and appropriated to the uses of the Army. It is alleged that large bodies of troops were encamped in the vicinity of Nashville from the spring of 1862 until the close of the war, and they required all the material in their reach to make them comfortable. The walls of the building were torn down, and the bricks used for building chimneys, &c., for the comfort of the soldiers, the other material being appropriated to the same purpose.

The memorialists had also built, at considerable expense, a stone foundation for another building on the Hillsborough turnpike, near the city; and they complain that, during the months of June and July, 1864, the stone was carried away by the United States troops, policing the grounds of Cumberland Hospital, and used for the floors of tents occupied by surgeons of the hospital, to the extent of 421 perches, of the value of \$3,368, and for other purposes.

They allege, and it is proved, that in pursuance of Field-Orders No. 107, headquarters Department of the Cumberland, a board of assessors convened at Nashville, Tenn., for the purpose of assessing their damages on account of the appropriation and use of their property as above stated; and that this board, on the 26th of June, 1865, awarded

them \$10,282.55 for their damages in the premises; that their claim, with the proceedings of this board, was filed for payment in the War Department; but the Attorney-General gave his opinion before their case was decided, that the War Department had no authority to settle and pay any claims in the State of Tennessee, except such as were for quartermaster or commissary stores, and hence their appeal to Congress.

They further say that in assessing their damages at \$10,282.55, the board of assessors awarded \$6,914.55 for the building first named, on the Harding turnpike, and \$3,368 for the stone foundation on the Hillsborough turnpike; but that, in point of fact, they have expended upward of \$15,000 on the building first named.

The following is the decision of the board of assessors:

The board, having maturely deliberated upon the evidence adduced, is of opinion that the damages sustained to the property of Messrs. Warren and Moore was done by United States troops, and do hereby assess the damages as set forth in the following bill, viz:

Damages of rock-work, 7 perches of range-work.....	\$70 00	
85 feet 6 inches of water-table	102 60	
three mounted braces, at \$40	120 00	
one stone-mounted chimney-cap.....	40 00	
damage to water-table of porch-front and flank-wall.....	120 00	
one tier cut quoin-stone.....	150 00	
		\$602 60
Damages of brick-work, 107,250 brick, at \$25 per thousand.....	2,681 25	
damages to chimneys.....	150 00	
		2,831 25
Damages of tin-work, seventeen squares of tin roofing, at \$14..	238 00	
four tin water-conductors, at \$15	60 00	
		298 00
Damages of carpenters' work, 71 squares 67 feet of joists, at \$10.	716 70	
100 feet joist-cornice, at \$8.....	800 00	
four front window-frames	300 00	
three mullion-window frames....	240 00	
thirty plain window-frames, at \$18	540 00	
six door-frames, at \$15.....	90 00	
lintels for doors and windows....	200 00	
twelve ventilators for basements, at \$8.....	96 00	
painting and sanding.....	200 00	
		3,182 70
Damages of stone foundation of house on Hillsborough pike, 421 perches of cut and rubble stone work, at \$8 per perch.....		3,368 00
Total		10,282 55

The board would respectfully state that, from all we can learn respecting the claimants, Messrs. Warren and Moore, we find that they have always been loyal men, and have been uncompromising Union men during the past rebellion.

C. C. McNEELY,
Captain, and President of Board.

J. G. MACADAMS,
Lieutenant Sixth Kentucky Government Volunteers.

W. S. STACY,
Lieutenant Seventy-eighth Pennsylvania Veteran Volunteer Infantry.

NASHVILLE, TENN., June 26, 1865.

As to the brick building, the evidence shows that it was destroyed piecemeal by the soldiers, at various times, belonging to different commands, encamped in the neighborhood, and the materials were carried

away—the joists and frame-work being used for fuel and in fixing up their tents, and the bricks to construct chimneys for heating and other purposes. This occurred at all seasons of the year, and in winter the materials used contributed greatly to the soldiers' comfort.

It is also shown that Warren and Moore did all in their power to save the building from destruction, applying repeatedly to the officers in command for guards and protection, which were afforded only occasionally and temporarily. In order to save their property from destruction they even offered the building free of rent to the Government for such use as it might see fit to apply it to.

There is the evidence of a single witness that in the fall of 1864 some lewd women were in the building, and one Colonel Blackburn ordered a squad of men to dislodge them or tear the building down. Some damage was done to the building in the execution of this order.

The material composing the building and the foundation was so scattered and broken as to become practically worthless.

Although the ground upon which the building was erected belonged to Mr. Hays, yet according to the contract he was to be at no risk or loss before its completion, and hence the loss in this case falls exclusively upon the contractors, Warren and Moore.

The facts as to the loss and the manner of it, and that the memorialists in no manner contributed to it, and are not culpable in any way, are established by the engineer in charge of the field-hospital, the superintendent of mechanics in the Quartermaster's Department, by the assistant quartermaster on duty at Nashville from January, 1863, to September, 1866, and other officers of the Army—especially Charles H. Gauthier, a staff-officer, and for three years chief clerk at the headquarters of General George H. Thomas, who gives a lively account of the appropriation by the soldiers from time to time, as their necessities required, of the materials of the building in order to keep themselves warm, making floors and chimneys for their tents, to protect themselves from the inclemency of the weather and keep off "the shakes." According to his testimony an impression prevailed among the soldiers that the building belonged to General Zollicoffer.

There seems no reason to doubt that the brick and stone used did contribute to the comfort and health of the soldiers in affording them shelter and warmth. The materials were taken and used for this purpose, and the plea of the soldier is summed up by Colonel Gauthier in these words :

Had I been forced to lie out upon the bleak hill-side (just where these houses lay) with the few means of comfort the Government provided the regiments I saw encamped, with the rain pouring through their flimsy dog-tents, methinks I should have gone in with the rest, (while the colonel was quietly sleeping,) snatched a few boards, foraged a few bricks, and the next day built me a floor to lie upon, instead of the mud, and out of the brick erected a nice little oven, out of which might emerge heat and more wholesome bread, thereby giving me much rude comfort, and no doubt saving Uncle Sam a vast amount of quinine, camphor-pills, and "sich like" trash.

The committee have quoted from the testimony of this gentleman because, though so long connected with the headquarters of General Thomas, he had served in the ranks as a common private, and knew the privations, wants, and feelings of the common soldier.

When this case was first before the committee, it did not appear that Warren and Moore had brought the spoliation of their property to the notice of the officers in command at that post, and we thought they had not been sufficiently diligent and attentive to their interests.

The additional testimony produced entirely removes that objection. It is made to appear that they did all in their power to arrest the spoliation.

This property was not captured or abandoned in the sense of the law. Had it been, the claimants could have had redress in the Court of Claims, for they were clearly loyal men. And yet the Government has received benefit from the use made of it in the comfort of the troops. If it was proper they should have floors to their tents and chimneys, the materials must have been purchased. It makes no difference in principle whether they were purchased or appropriated, if it can be shown that a proper use was made of them. Suppose the quartermaster failed to supply the regiment with fuel for warmth and cooking, and because of this failure the men laid hands on the wood-piles of loyal citizens, and thus supplied their needs, should not the owners be compensated? If so, the committee can see no reason why Warren and Moore should not be paid for the value of the materials taken from them. To be sure, this would fall far short of their actual loss, but it would be a payment for what may properly be regarded as quartermaster's stores.

From the evidence we might infer a greater loss than that assessed by the board convened by General Thomas, with instructions to examine and report upon the case. That amount, it will be remembered, was \$10,282.55. The members of the committee entertaining conflicting views—some being of opinion that this is not a proper case for relief on the facts stated, but a majority being in favor of partial relief—have agreed upon the sum of \$3,500, and recommend the passage of the accompanying bill.



IN THE SENATE OF THE UNITED STATES.

APRIL 15, 1874.—Ordered to be printed.

Mr. GOLDTHWAITE submitted the following

REPORT:

[To accompany bill S. 113.]

The Committee on Claims, to whom was referred "A bill for the relief of the trustees of Wilkey Lodge, Independent Order of Odd-Fellows," have had the same under consideration, and submit the following report :

That the bill referred to the committee asks an appropriation of \$3,547.50, to be paid to the claimants for damages sustained by reason of the destruction of their buildings, furniture, and regalia during the war.

The evidence shows that the Wilkey Lodge building, in Charlestown, W. Va., was, on the 28th of May, 1862, destroyed by the soldiery of the United States by fire, without orders and without necessity, by a detachment of Maryland troops, commanded by Major Duer; that the burning, in the opinion of Brigadier-General Strother, was not only unauthorized but prejudicial. The same witness states further that he endeavored to get the officers in command to have it extinguished, and failing in this he called upon the citizens to assist, but they declined to do so on the ground that the troops had threatened to shoot any one who would attempt it; that they abandoned their incendiary exertions only on the arrival of a detachment of cavalry, which was placed under the command of the witness, General Strother, who at once went to work with a party of citizens to stop the progress of the flames. It was too late. The fire had destroyed the building and threatened to consume the houses adjoining. No excuse whatever is assigned for this act of vandalism, and your committee, in the absence of any other cause, can only refer it to the looseness and general disposition to license too frequently consequent upon the breaking up of camps and the retreat of armies.

Is the Government legally or equitably bound to make compensation for the destruction of property under such circumstances?

The answer is, that it is necessity alone that gives the right to take private property either for use or destruction. Without the necessity the act is a trespass, and the trespasser alone is responsible. Here there was not even the semblance of necessity. In the words of the witness, Brigadier-General Strother, "the destruction of the building was not only unauthorized and unnecessary, but, under the circumstances, prejudicial to the military movement then in progress—the retreat of a portion of the Federal Army."

To hold the Government responsible for the acts of a marauding soldiery is sustained neither by precedent nor authority.

In the claim of Maria W. D'Orme, for compensation for buildings destroyed by the army of the Potomac, in Loudoun County, Virginia, the committee held that the property being destroyed without warrant of law or public necessity the Government was not responsible; and again, in the claim of William Spence, at the first session of the Forty-second Congress, for the destruction of a foundry, machine-shop, and gas-works by unauthorized depredations of undisciplined soldiers, the committee say, "However oppressively these losses must fall upon the claimant, yet as the proof does not show that the foundry and gas-works were taken by competent military authority, or that they were applied to the legitimate and necessary use of the Army, the committee feel constrained to reject such items." Other cases might be cited from legislative as well as judicial authority sustaining the same principle. If, under the facts established in this case, the Government can be held responsible, why not for every trespass, larceny, or arson which may be committed by every band of marauding soldiery attached to the Army?

Your committee is of opinion that upon the facts the claimants are not entitled to any relief, and ask leave to be discharged from the further consideration of the bill.

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IN THE SENATE OF THE UNITED STATES.

APRIL 16, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill H. R. 1439.]

The Committee on Pensions, to whom was referred the bill (H. R. 1439) granting a pension to John Folger, submit the following report :

John Folger was a private in Company K, Sixtieth Regiment Ohio Volunteer Infantry, who volunteered on the 30th day of October, 1861, to serve one year, and was discharged on the 5th of August following by reason of surgeon's certificate of disability.

He was subsequently drafted in Company K, of the One hundred and twenty-second Regiment of the same infantry, to serve three years or during the war.

He was discharged seven months after this draft, to wit, on the 17th January, 1865, at Chester hospital, by reason of surgeon's certificate of disability. That disability occurred in this wise: On the last of July, 1864, that part of the Army with which he was connected was on its march from Harper's Ferry to Frederick City, in Maryland. The weather was excessively warm, and the men, overcome by fatigue, heat, and loss of sleep, frequently dropped out of the ranks and fell behind. The regiment in question was considerably reduced in column in this way. Folger received a pass from the surgeon of the regiment to allow him to pass the provost-guards, with directions to follow and join his company as soon as possible. He stepped to the side of the road on which the column was marching in order to obtain rest and sleep, and laid down under a tree, leaning against a log, with the butt of his gun resting on the ground and leaning against his left shoulder, in which condition he fell asleep, and while asleep was shot in the left arm below the elbow. This is the soldier's story. He does not pretend to know how the accident occurred. Soon afterward he stated to those who found him in this condition and superintended the amputation, that his gun was unloaded at the time he fell asleep, and he was of the opinion then that he was shot by some passing soldier. He continued to be of that opinion on the 28th of November, 1870, when he made his declaration for an invalid-pension.

He does not seem to have wavered from that view until he made his affidavit on the 22d of November, 1873, in order to obtain relief from Congress. His language in that is as follows: "That he can account for it in no other way than it was the accidental discharge of his own gun, or that of some of the troops who were passing over the road below." No one seems to have been present upon the occasion of the accident—at least, if any one was, the papers throw no light upon the fact.

But living some distance from the spot, the Rev. Joseph Trapwell heard the report of a gun, and the halloo of a person as if in distress, immediately afterward. He went to see what the matter was, and found Folger, near the point where the troops were passing, with his left wrist completely shattered by a gunshot wound. He immediately assisted him to his house, about a quarter of a mile away, called in a surgeon, and within an hour after the accident the limb was amputated. The soldier, by his account, was much exhausted from loss of sleep and heat besides his wound. Folger told him that his gun was not loaded, but Mr. Trapwell, having examined the ground and the position the soldier occupied while resting and asleep, expresses the opinion that the gun must have been loaded, and accidentally discharged by some movement of the sleeper. He saw the pass from the surgeon, allowing Folger to follow the regiment as fast as he could, and to pass the provost-guard.

The surgeon who performed the operation likewise says that Folger thought, at the time, that some one had shot him, but could not tell from what quarter the shot came.

The surgeon of the regiment says that the weather was very warm at the time, and many of the men fell out of the ranks, being unable to keep in line, and that while he has no recollection of giving Folger a pass, and no record of one is on his books, he thinks it very likely that he did give him permission to fall behind the regiment to the ambulance-train.

This is the whole of the case. It was rejected at the Pension-Bureau on the theory that the soldier was absent from his command without proper authority, and, therefore, not in the line of duty when he received his wound.

The case is not without difficulty. There is great mystery in the manner in which the soldier was shot. The case may be said to depend wholly upon the testimony of the soldier himself—we mean as to the turning-point of the case. If he was wounded by his own will or gross carelessness, he should not, of course, be relieved; but no one proves that, and his own evidence does not convict him of gross carelessness. Not without some hesitation the committee have concluded to recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

APRIL 16, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 1719.]

The Committee on Pensions, to whom was referred the bill (H. R. 1719) granting a pension to Ezra H. Foster, report:

Foster was enrolled as a private in Company I, First Regiment Wisconsin Cavalry, on the 15th of November, 1861, and discharged on the 27th day of October, 1862, by reason of surgeon's certificate of disability contracted while in the service.

Again, on the 22d day of December, 1863, he was enrolled as a private in the Thirteenth Wisconsin Battery, and discharged on the 2d of August, 1864, on surgeon's certificate of disability.

The proof shows that when he first joined the service he was a sound, able-bodied man, in good health, with no apparent disability, and capable of enduring great fatigue. He was forty-three years of age and a farrier by profession. His company was moved to Benton Barracks in March, 1862, and shortly afterward he was detailed by the colonel commanding the regiment to perform farrier's duty, and in consequence of this he was necessarily absent at roll-call.

In shoeing a horse he was kicked and three ribs broken. Not long afterward, in attempting to shoe a mule, some witnesses say he was kicked, others that he was jumped upon and trampled down by the animal, causing injuries to the chest and lower part of the abdomen, and producing double hernia. Positive evidence of all this is given by a comrade who was detailed to take care of him. In April following, the regiment was moved to Cape Girardeau, but Foster was not able to accompany it, nor, indeed, to perform duty afterward.

It seems that the captain of the company took umbrage at the detail of the soldier without being consulted in the matter, and reported Foster on the rolls as "absent," without showing why or giving the proper explanation.

Foster swears that while he lay sick and disabled at the barracks, a certificate of discharge was made out by H. N. Gregory, the then surgeon of the regiment, setting forth the fracture of the ribs and the double hernia as the ground of discharge, and that the paper was forwarded to the proper officer for approval, but after the lapse of two months was returned, as imperfect in some details, to the surgeon for correction, but by this time the surgeon had fallen by the hands of a guerrilla. Upon Foster's return to his regiment, the latter part of June, one Kramer, then acting surgeon, without any personal examination as to the ribs and hernia, certified to disabilities of quite a different

character, sufficient, however, in themselves to entitle him to a discharge, and he was discharged.

In 1863 he was put down in the lists as subject to the draft, in the district where he lived, and to escape the disgrace of conscription he presented himself as a volunteer, confidently believing that a personal examination would insure his rejection, and, as he says, he was rejected by the surgeon for hernia, but that next day Captain Griffith persuaded the examining surgeon to pass him, and pass him he did, under certain influences brought to bear, though the surgeon protested he could not serve a day. And so it turned out, for in a few months he was again discharged as unfit for duty.

This in brief is the case. The Pension-Office declined to allow a pension because it was not satisfactorily shown that the hernia originated in the service. The Commissioner, however, in a letter to the House committee, intimates that the case is one for relief by Congress.

We concur in the conclusion to which the House has come, and think it reasonably well established that the hernia was the result of his service in the line of duty, and recommend that the bill do pass without amendment.

IN THE SENATE OF THE UNITED STATES.

APRIL 16, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 2791.]

The Committee on Pensions, to whom was referred the bill (H. R. 2791) granting a pension to Franklin Stoner, report:

Stoner was a private in Company G, Eighty-fourth Regiment Pennsylvania Volunteers. While his regiment was lying in front of Petersburg, in December, 1864, he obtained leave of his captain, as he says, to accompany a comrade on the railroad to Mead's Station, about four miles distant from the camp. The train did not stop at the station, however, and the soldier jumped off while it was in motion. His overcoat caught some of the fixtures of the car, so that, instead of jumping clear, he was drawn under the cars, and the wheels passed over the right foot, crushing it so badly as to make amputation necessary. He was taken first to the Ninth Army Corps hospital and cared for, from which he was transferred to City Point hospital, and from there to Chester hospital in Pennsylvania, where he remained until discharged.

This account is principally taken from Stoner's memorial, though the manner of his injury is told by others quite fully. His application for a pension was denied, because the injury did not occur while he was in the line of duty; and this presents the only question in the case.

Unfortunately, we have not all the facts desirable to form a conclusion. The case, as made out by wholly *ex-parte* evidence, we may presume is just as favorable to the soldier as strict truth would allow, and whatever would militate against the claim is not put forward.

1. He got a permit from his orderly-sergeant instead of the captain to accompany a brother soldier to Mead's Station, on that soldier's return to City Point. The trip had no significance or purpose, except to enjoy his friend's society. It was purely a pleasure-trip, solicited by the soldier, from which the United States could derive no possible benefit.

2. What his condition was when he got off the cars, we do not know. If he was strictly sober, it was easy for him to aver and prove it. The act, itself, of jumping off the train while it was in motion was of that kind of rashness as in our opinion to call for an explicit denial of intemperance on Stoner's part. We have carefully looked over the evidence, and find nothing said one way or the other as to his condition at the time, and this circumstance we think against him.

3. All accounts agree that the train was in motion when Stoner jumped

off, but how fast it was moving is not shown. We think it was the business of Stoner, in coming to Congress for relief, to show that he was not only sober, but reasonably cautious. We have a right to infer he was very reckless. If he has a good case, he has not taken pains to make it out. We therefore recommend that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

APRIL 16, 1874.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 599.]

The Committee on Pensions, to whom was referred the bill (H. R. 599) for the relief of Ade H. McDonald, having had the same under consideration, report :

That on March 3, 1873, an act was passed granting a pension to the petitioner; and they therefore ask to be discharged, and that the pending bill be indefinitely postponed.

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REPORT
OF THE

SECRET

1875

IN THE SENATE OF THE UNITED STATES

APRIL 11, 1875—Given to the Senate

Mr. TROTT submitted the following

REPORT:

[The accompanying bill H. R. 1000]

The Committee on Education to whom was referred the bill (H. R. 1000) for the relief of Mrs. M. M. Trott, having had the same under consideration, report:

That on March 3, 1875, an act was passed granting a pension to the petitioner; and that she has been so long in the receipt of the same that she has been unable to pay the same, and that the same is now due her.

IN THE SENATE OF THE UNITED STATES.

APRIL 16, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 709.]

The Committee on Claims, to whom was referred a memorial praying for the relief of the trustees of the German Evangelical Church at Martinsburgh, W. Va., and an appropriation of \$3,500 to re-imburse them for the destruction of their church-edifice, submit the following report:

The German Evangelical Church at Martinsburgh, W. Va., was composed of Germans and citizens of German descent, mostly laboring people, attached to the Government of the United States, many of whom proved their loyalty by entering the Union Army during the war of the rebellion. The house in which they worshiped is valued by the witnesses at \$3,500. On the night of the 17th of February, 1863, it was destroyed by fire. It was securely locked, and had not been used for religious worship for eighteen months previously to that time; the disordered condition of the country and the absence of many of the members who had been driven from home, and found employment in the service of the United States as soldiers or otherwise, and of their preacher, who was a chaplain in the Union Army, having rendered their regular worship impracticable.

On the evening in question, (February 17, 1863,) Capt. G. W. Hicks, of the Ninth Virginia Infantry, arrived in Martinsburgh, having in charge about sixty men, who escorted a Government train from Winchester to that post. They were quartered in this church by order of the post-adjutant, (Lieutenant Hyatt.) A stove stood on the eastern side of the building, and a fire was kindled in it. The pipe became disjointed at or near the ceiling. It was joined again, or supposed to be, and the fire again started. The night was stormy, the soldiers wet and cold, and a quick fire made from the dry pine seats created such heat that the ceiling took fire near where the break in the stove-pipe had occurred. This is one account.

Another states that the stove was moved by the soldiers to the open space in the front part of the church, and the pipe detached from the chimney and run up as far as it would reach into the dome or cupola. The blaze of the fire out of the top of the pipe ignited the wood-work. The stove was so moved in order to give the soldiers more space to hang and dry their clothes, wet from rain and snow.

But, whichever account is the true one, it seems that the building was discovered to be on fire at 7 o'clock in the evening, and, all efforts

to stay the progress of the flames proving ineffectual, the building was burned to the ground.

It appears that those living in the neighborhood of the church refused to extend any aid to extinguish the fire, though appealed to for buckets and assistance; and this arose, it is said, from the hostility they cherished to the loyal sentiments of the worshipers at this church.

Possession of the building was obtained by the soldiers entering at the windows and opening the door from the inside.

Such, in brief, are the facts:

First. The soldiers were quartered in the church by order of the officer in command.

Secondly. They were so quartered for purposes of shelter, warmth, and rest.

Thirdly. The building was violently entered without the consent of the owners.

Fourthly. It was dedicated to religious uses and used for no other purpose than the worship of God.

Fifthly. The humble owners were, to a man, loyal to the United States, and many of them doing service in its armies.

Sixthly. Its value was \$3,500, and the congregation have not had the means to replace it up to this time, and the prayer of the memorial is to compensate them for the loss.

Martinsburgh is situate in Berkeley County, which furnished many conspicuous instances of loyalty during the war.

On the 16th day of August, 1861, President Lincoln, by proclamation, declared the inhabitants of certain enumerated States to be in a state of insurrection against the United States, and commercial intercourse between the same was prohibited; but he excepted from the operation of this proclamation the inhabitants of that part of Virginia lying west of the Alleghany Mountains, and such other parts of that State and other States as might maintain a loyal adherence to the Union and the Constitution, or might be, from time to time, occupied and controlled by forces of the United States engaged in the dispersion of the insurgents.

At a later date, on the 1st of July, 1862, another proclamation declared that Virginia, except certain enumerated counties, not embracing Berkeley, were in a state of insurrection and rebellion, so that the law for the collection of taxes there could not be executed.

Again, on the 2d of April, 1863, another proclamation declared that the inhabitants of Virginia, except the forty-eight counties designated as West Virginia, were in a state of insurrection against the United States.

Except for a short time during the war, Martinsburgh was never in the enemy's lines. The troops of the United States had almost continuous and uninterrupted possession, and held such possession when this accident occurred. Shortly after the admission of West Virginia into the Union as a State, the counties of Berkeley (in which Martinsburgh is situate) and Jefferson were, by a vote of the inhabitants, attached to the new State, and have been regarded as a part ever since.

The committee are of opinion that the trustees of the church should be allowed \$2,500 for the loss of the church and furniture, and report herewith a bill, and recommend its passage.

Senate documents

Bd.: [268,f.] 1873/74, Vol. 1 = Congress 43, Sess. 1

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